



Appeal Decision

Site visit made on 17 January 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 JUNE 2023

Appeal Ref: APP/R3650/W/22/3292742

Abbey Business Park, Monks Walk, Farnham GU9 8HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Lady C Caffyn-Parsons against the decision of Waverley Borough Council.
 - The application Ref PRA/2021/01768, dated 20 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is conversion of part of building to a total of 11 residential units.
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Decision

1. The appeal is allowed, and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of part of building to a total of 11 residential units, at Abbey Business Park, Monks Walk, Farnham GU9 8HT, in accordance with the terms of the application, Ref PRA/2021/01768 and the details submitted with it, including Drawing Nos Location Plan: 19065-RFT-00-XX-DR-A-0100 and Schematic Residential Conversion – Scheme 2 (retained Storage) 19065-RFT-00-XX-DR-A-0502, and subject to the schedule of conditions appended to this decision.

Preliminary Matters

2. This appeal was submitted with a similar proposal at this site, and these were identified as linked cases. However, the Council's appeal questionnaire, in relation to the proposal, subject of this appeal, was not submitted according to the stated timescale. To avoid delay in respect of the linked proposal¹, and following consultation with the main parties, it was agreed that the appeals would be dealt with separately.
3. The Council asked to submit an appeal statement for this appeal. As this was outside the normal time limits applicable to the appeal, and no material change in circumstances were presented which would justify accepting this information at this late stage, this request was declined. However, I have had regard to the Council's appeal statement submitted with the original linked appeals. For avoidance of doubt, with the exception of that statement, this formal decision relates to the evidence submitted in relation to this proposal.

¹ Appeal Decision Ref: APP/R3650/W/22/3292739

4. Under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order), planning permission is granted for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.
5. The provisions of Class O of the Order require the local planning authority to assess the proposed development on the basis of transport and highways impacts of the proposed development; contamination risks on the site; flood risks on the site; impacts of noise from commercial premises on the intended occupiers of the development; and the provision of adequate natural light in all habitable rooms of the dwellinghouses.
6. The Council has referenced development plan policies in its decision notice. The principle of development is established by the Order, and the provisions of Schedule 2, Part 3, Class O of the Order do not require regard be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to the matters of prior approval specified for Class O.

Main Issue

7. The main issue is whether prior approval should be granted, with particular regard to the proposal providing adequate natural light in all habitable rooms of the dwellinghouses

Reasons

8. The appeal property is occupied by a long building, divided into several commercial units. The southern section of the building is two storeys, with windows at both levels to the front and rear. The larger remaining section of the building is single storey. This part of the building has ground floor windows to the front and rear, supplemented by rooflights, and ground floor and first floor openings in the northern gable of the building. The front elevation also contains two full height doorways with roller shutters of solid appearance and no apertures when closed.
9. The proposed change of use of the commercial building would result in four dwellings in the existing two-storey part of the building. In the remaining part of the building, there would be seven dwellings. All proposed dwellings would have bedrooms at the upper floor level, and this includes those in the existing single storey part of the building.
10. The Order² requires that prior approval must be refused in relevant applications if adequate natural light is not provided in all the habitable rooms of the dwellinghouse. Part 3, Paragraph X states that habitable room means 'any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.

² Paragraph W.(2A) of Part 3 of the Order.

11. As stated above, the only windows at the upper level on the elevations of this existing single storey building are at the gable end. Moreover, the existing rooflights on this part of the building are small and set close to the ridge of the roof. Therefore, the light from this source is principally limited to the central internal area of the building.
12. The proposed centrally located stairwells of the dwellings, in this part of the building, would benefit from natural light through these existing rooflights. However, this source of light would be restricted from reaching the bedrooms of these proposed dwellings, as these rooms would be divided from the stairs by internal walls. Taking account of the size and position of the existing rooflights, bedrooms in these proposed dwellings, with the exception of those in the north end unit, would not have an adequate source of natural light. Moreover, there is a section of this part of the roof which does not have rooflights such that one of the proposed dwellings would not have a source of natural light at the new upper floor level.
13. Planning permission (companion permission)³ has relatively recently been approved for the installation of rooflights at the appeal property. The approved plans show that the existing rooflights on the single storey section of the building will be replaced by slightly larger rooflights, and these will be located lower down the roof plane such that they would provide an overhead source of natural light to the proposed bedrooms. The approved plans also permit additional rooflights that will cover the space on the roof which does not currently benefit from this feature. Therefore, if installed, these rooflights would allow an adequate supply of natural light to reach the proposed first floor habitable rooms on this single storey section of the building.
14. The appellant states that if the Council had determined the prior approval and companion applications at the same time, it would have been doing so on the understanding that all proposed habitable rooms would have natural light. On that basis the appellant believes that there would be no requirement to cross condition the companion permission to ensure its implementation. However, at the time of the site visit I saw no evidence that work had commenced on the approved rooflights, and there is nothing before me that provides certainty that this companion permission will be implemented, if I was to grant prior approval for the change of use.
15. Paragraph W(13) of Schedule 2, Part 3 of the Order states that local planning authorities may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. In this case planning permission has been granted for operational development for rooflights, and, for the reasons outlined above this would address the prior approval matter at issue in this case. As such imposing a condition to prevent occupation of the proposed dwellings until this approved works has been carried out is a solution to allowing this change of use.
16. The Planning Practice Guidance (PPG) relating to planning conditions does not preclude negatively worded conditions.⁴ Imposing a condition requiring the installation of the rooflights would ensure that all proposed habitable rooms would have adequate natural light, and this would make the change of use acceptable. The condition would be reasonable and necessary in this regard

³ Ref: Decision Notice WA/2021/02463

⁴ Ref: Paragraph: 005 Reference ID: 21a-005-20190723

and as such would satisfy the test for planning conditions set out in PPG and the Framework.

17. I have had regard to the main parties' comments about the area marked as 'study' for the proposed dwelling Type A, and the advice set out the Council's supplementary planning document on this matter. However, this is not shown as an enclosed room, and it appears that the proposed study would form part of a hallway. Therefore, while noting the absence of a source of natural light to this space this would not be contrary to this Condition of Class O.
18. I have also had regard to the Council comments on other prior approvals in the Borough, where it was concluded that adequate natural was provided. This would also be the case for this proposal for the reasons outlined and therefore this matter has not altered my findings.⁵
19. In light of the above, I find that the proposal would provide adequate natural light in all habitable rooms of the dwellinghouses. In respect to this prior approval matter, the proposal would be consistent with the Framework which seeks a high standard of amenity for existing and future users.
20. I have not been provided with a copy of Policy TD1 of the Local Plan. However, for the reasons stated above development plan policies are not determinative in this case.

Other Matters

21. Concerns have been raised by consultees and interested parties about this proposal. These include the effect on lease agreements, loss of business units, effect on the Area of Outstanding Natural Beauty and carbon neutrality. However, these issues are outside the prior approval matters outlined in Part 3 Class O of the Order, and that can be considered in this appeal.
22. Farnham Town Council has also raised concerns that the change of use would result in an overdevelopment of the site. However, I have not been presented with substantive evidence that the site would be overdeveloped in a manner that would impact detrimentally on the prior approval matters relevant to this appeal. Therefore, these matters have not altered my findings.
23. Two commercial storage units would be retained alongside the residential units. The Council's Environmental Health Officer, in respect of noise impacts, has no objection to the proposal subject to conditions. Moreover, the officer's report concludes that the use class related to these retained units is considered appropriate alongside the residential use. I find nothing before me to dispute this conclusion.
24. The appeal site falls within the "Zone of Influence" for the Wealden Heaths and Thames Basin Heaths Special Protection Areas. These designations affect the heathland areas that provide habitats for three rare bird species. The areas are interspersed by urban areas. This makes these habitats particularly vulnerable to the effects of new development and urbanisation. All three bird species nest on the ground or at low level and so are easily disturbed or harmed by recreational activity such as dog walking.

⁵ Refs: PRA/2021/01346 and PRA/2021/01905

25. It is anticipated that, without mitigation, new residential development in this area could have a likely significant adverse effect on the sensitive qualities of these designated areas, through increased recreational pressure, particularly when considered 'in combination' with other plans and projects.
26. The grant of planning permission under Article (3)1 of the Order is subject to the provisions of the Order for each class of development and compliance with Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Effectively, Article (3)1 of the Order provides a pre-commencement condition which must be met, where the development would affect a protected habitat, before the works can be undertaken as permitted development. This includes a separate application to the Council under Regulation 77 of the Habitats Regulations to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the Order.
27. Based on the evidence before me, it does not appear that an application to the Council under Regulation 77 has been made. However, as the Regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issue that I have examined. Therefore, I do not need to consider this matter further as part of the appeal.

Conditions

28. The main parties have been consulted on a condition requiring the relevant operational works approved under the companion permission be carried out prior to occupation of the dwellings. No objection has been raised. As outlined above this is necessary for certainty that the living conditions of future occupants, having regard to natural, is protected.
29. The Council has suggested conditions and the appellant has raised no issue with these suggestions. As outlined above the Order states that the prior approval can be granted subject to conditions, but where these are reasonably related to the subject matter of the prior approval.
30. I find it reasonable to attach conditions for the provision of vehicle parking and sheltered cycle parking in the interest of transport and highway impacts. I have made minor amendments to wording in the interest of consistency, precision and reasonableness.
31. Highway impacts can occur during the construction phase of development and therefore a construction management plan could be related to this prior approval matter. However, the proposal is for a conversion of an existing building and these works would be for a temporary period only. I have not been presented with substantive evidence that this phase of the development would have an unacceptable impact on the highway. It is not therefore reasonable or necessary to attach this condition.
32. Electric vehicle charging points are generally dealt with by regimes outside the planning system. Even if this was not so, I have not been presented with compelling evidence that the absence of such features at this site would result in highway safety concerns. This condition is therefore not necessary.

Conclusion

33. For the reasons given above, the proposal would satisfy Condition O.2.(1) (e) of Class O of Part 3 of the Order in relation to adequate natural light, and prior approval is therefore granted, and the appeal is allowed.

A J Sutton

INSPECTOR

Appendix

Schedule of Conditions:

1. The residential use hereby permitted shall not be occupied until the installation of rooflights have been completed in accordance with the terms and conditions of planning permission Ref: WA/2021/02463, and the rooflights shall be retained thereafter.
2. The residential use hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved plans (Drawing No 19065-RFT-00-XX-DR-A-0502) for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
3. The residential use hereby permitted shall not be occupied until details of the secure, covered parking of bicycles have been submitted to and approved by the local planning authority in writing, and the approved bicycle parking facilities are carried out in accordance with these approved details. The bicycle parking facilities shall be retained thereafter.

End of Schedule.