



Appeal Decision

Hearing held on 14 June 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal A: APP/P1560/X/22/3298455

Units 7b, 6, 6a & 5 Ricebridge Estate, Station Road, Thorpe le Soken, Essex, CO16 0HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Peter Thompson Bates against the decision of Tendring District Council.
 - The application ref 22/00383/LUPROP, dated 2 March 2022, was refused by notice dated 27 April 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is conversion to residential use in accordance with PD right class PA.
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Appeal B: APP/P1560/X/22/3312911

Units 5, 6, 6a, 7b Rice Bridge Industrial Estate Station Road, Thorpe-Le-Soken, CLACTON-ON-SEA,

- The appeal is made by Mr Peter Thompson Bates against the decision of Tendring District Council.
- The application ref 22/01866/LUPROP, dated 8 November 2022, was refused by notice dated 6 January 2023.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is conversion to residential use in accordance with PD right class O.

Appeal E: APP/P1560/X/23/3316991

Unit 5, 6, 6A and 7B Rice Bridge Industrial Estate, Station Road, Thorpe le Soken, Essex, CO16 0HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mark De Roy against the decision of Tendring District Council.
- The application ref 22/02107/LUPROP, dated 20 December 2022, was refused by notice dated 14 February 2023.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is conversion to residential use in accordance with PD rights class O.

Decisions

1. Appeals A, B, C, D and E are dismissed.

Preliminary Matters

2. Appeal A is a redetermination following a consent order in the High Court of Justice dated

Planning history

7. The appeals relate to 5, 6, 6a and 7b Ricebridge Estate, and arise from the same set of facts. On 29 July 2020 the agent for Mr De Roy, the landowner, submitted the Planning Portal application form for the "Notification for Prior Approval for a Change of Use from Premises in Light Industrial Use (Class B1(c)) and any land within its curtilage to Dwellinghouses (Class C3) Town and Country Planning (General Permitted Development) (England) Order 2015 – Schedule 2, Part 3 Class PA". The description of the site in the Planning Statement and Flood Risk Assessment submitted in support of this application was as follows:

"The Ricebridge Estate comprises a mix of offices and industrial units located close to the railway bridge and railway station on Thorpe le Soken. At the entrance to the estate is a large two storey building (Units 7 and 7a) constructed in the 1980s for which prior approval was issued on 28th May 2020 for conversion into 8 residential units (20/00464/COUNOT). Immediately to the east is a range of single storey B1(c) commercial units in the same ownership as Units 7 & 7a. These are occupied by a specialist timber joiner, a company specialising in fire extinguishers and fire alarms and two units which are currently vacant but until recently were occupied by a company involved in the assembly of electrical components."

8. The prior notification as submitted was therefore predicated on the existing use of all of the units as class B1(c) and therefore seeking to use the permitted development to change to use as dwellinghouses under Class PA.
9. The Council has admitted that errors were made during the consideration of the application which resulted ultimately in the decision referring to Class O (rather than Class PA) and the proposed conversion of B1(a) office units to six residential dwelling units. The decision issued was that the proposal would not require prior approval and the proposal constituted permitted development under Class O and could be carried out provided that it was done wholly in accordance with the legislation (and the three conditions also imposed).
10. Following the issue of this decision, the Council received a letter before claim for judicial review from an interested party alleging that the decision was irrational and not in accordance with

12. Appeals A, B and C relate to whether the proposed residential use would be permitted development under the GPDO Schedule 2, Part 3, Class PA.
13. The Council's position is that no prior approval was granted for the conversion of the application Class B1(c) buildings under Class PA and that any such conversion would not be in accordance with the planning permission granted by the GPDO. The appellants argue that a 'prior approval date' occurred 56 days after the making of the application and as such the permitted development can be implemented.
14. The appellants argue that the initial extension of time for determination as to whether the prior approval of the Council would be required (as set out in Condition PA.2.(b)) was not agreed by the applicant and the authority in writing (in accordance with Article 7 (c) of the GPDO). It is common ground that subsequent extensions of time were agreed and evidenced in writing and that these took the date for determination past the cut-off date of 30 September 2020 within Class PA¹.
15. The appellants' case is that, as the first extension was not properly given on behalf of the applicant, development could be carried out following the expiry of 56 days following the date on which the application was received by the Council without notification as to whether prior approval was given or refused. They argue that this is in accordance with Paragraph X(11)(c) of the GPDO which defines the 'prior approval date' as the date on which prior approval is given or a determination that such approval is not required is given, or the period for giving such a determination set out in para W(11)(c) has expired without the applicant being notified whether prior approval is required, given or refused.
16. Caselaw² holds that Article 7 of the GPDO permits an extension of the statutory period for determining a prior approval application under Part 3 by agreement evidenced in writing (including via email) between the applicant and the LPA. In this case the prior approval application had been made by Peter Le Grys of Stanfords as planning agent for the landowner. Mr Le Grys sent an email on 9 September 2020 suggesting an extension of the date for the determination to 28 September 2020 and to which the planning officer replied on 10 September to say that she '*will gladly extend the period of time for the determination of this Prior Approval*'. These 2 emails taken together provide the agreement in writing regarding the extension of time under Article 7 as required by the Gluck case.
17. There was a further email (dated 11 September) from a colleague at the agent's business as he was on leave which stated that she was 'happy to support' the extension to 28 September. Whilst

took the final date well past the cut-off date of 30 September (with the decision notice issued on 27 November).

18. I do not therefore find that there is evidence before me to support the assertion that the first extension of time (and therefore subsequent extensions) was not properly made. The Council and the appellant's agents agreed to extend the time for determination beyond the cut off date contained within Class PA which appears to have been an error by both parties, and I do not therefore find that there was a prior approval date, as defined in Part 3, paragraph X, 56 days after the application was made.
19. The appellants also argue that as the Council determined the prior approval application under Class O rather than Class PA, which deals with a change from an existing office use to dwellinghouses, the application which was properly submitted under PA was never considered and the prior approval date therefore occurred 56 days after the application.
20. However, it is not clear from the papers when the Council began to mistakenly treat the application as being made under Class O, although I note that the appellant's Acoustic Report, which is dated 20 September 2020 refers to the change of use from office to residential but was not submitted to the Council until 3 November by email from the agent, and this is clearly quite some time after the cut-off date in Class PA of 30 September 2020.
21. There is no evidence before me to show that the appellant's agent was aware that there was a confusion regarding which type of existing B1 use, and therefore PD right, was being considered when he agreed to the extension of time for the determination. As it was agreed by the agent that the extension of time was extended past the cut off date, albeit apparently without realising what the effect of this would be in terms of Class PA under which the application for prior approval had uncontrovertibly been made, it is not possible to later argue that the prior approval date occurred on an earlier date.

Class O

22. Appeals D and E are brought on the basis that the change of use to dwellinghouses falls within the permitted development allowed under the GPDO Class O.
23. Development is not permitted by Class O.1 (b) if the building was

dealt with the prior notification application under Class O and refers to the previous use of the units as offices. However, the Council have categorically stated that this was in error and that they do not have evidence to show that any of the units had a primary office use.

26. The landowner has personal knowledge of the use of the units which he described at the hearing, and he said that there had been some changes in the use of these units over time which meant that it was not inconsistent to argue that Class O could have applied based on the uses on the relevant date of 29 May 2013 (as opposed to the relevant date of 19 March 2014 in Class PA). At the hearing, the appellant described the uses as set out in the next few paragraphs.
27. The appellant's case is that Unit 5 was used originally as an office with storage for a business which dealt in fire alarms and extinguishers but the business changed from 2014 onwards when it became involved in the recycling of this type of equipment as well as the provision of CCTV systems. Some parts of these products (for example the brackets) were assembled on site and the use therefore changed to light industrial.
28. Unit 6 was used by a carpenter and joiner with a small office element which had begun before 2014 and Mr De Roy accepted that this had therefore been in a B1 (c) light industrial use throughout and Class O could not apply to this unit.
29. Unit 6A had originally been used as a sales office with a small storage facility by a business which supplied electrical connectors but that changed at some point in 2014 when they set up a small workshop in order to process the products. From that point, although Mr De Roy was unsure as to when exactly this was, the unit was used for storage and processing until it ceased trading sometime later.
30. Unit 7b had been used for the storage of documents until around 2013 but was then used for the production of tilt switches which is a light industrial use.
31. The case of *Gabbitas v SSE & Newham BC* [1985] JPL 630 tells us that if there is no evidence to contradict the appellant's version of events regarding use or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
32. Mr DeRoy's evidence accords with the details submitted with the prior approval application made under Class PA. The Council did not dispute these details as they do not have their own information regarding what use the units were being put to and during what time periods. However, the uses described, in conjunction with the information regarding the dates of such uses, are not sufficiently precise

33. In any event, Class O only permits the change of use falling within Class B1(a) (offices) to a use falling within Class C3 (dwellinghouse). Even taking the appellants' case at its highest they accept that any office use that may have been existing on 29 May 2013 within any of the units had ended and become Class B1(c) light industrial at some point in 2014.
34. The appellants argue that the planning statement submitted with the original prior notification application had a missing word and should have read "There has been no other use of these buildings at any time *since* other than for B1(c)", the 'since' in this sentence referring to the appointed date in Class PA (i.e. 19 March 2014). The permitted development under Class O could not have applied therefore as, on the appellants' own case, the use of the units at the time of the application was not as offices but as light industrial. The development did not fall within the scope of the permitted development provision.
35. I am not satisfied on balance, based on the evidence before me in these appeals, that any of the units were in a Class B1(a) office use on the relevant date or at the date of the LDC application, and Class O cannot therefore apply.

Conclusion

36. For the reasons given above I conclude that the Council's refusals in Appeals A, C, D, and E and the deemed refusal in Appeal B to grant a certificate of lawful use or development in respect of the conversion to residential use was well-founded and that the appeals should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Zoë Franks

INSPECTOR