



Appeal Decision

Site visit made on 4 July 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2023

Appeal Ref: APP/U5930/W/22/3307966

Spring House, 73 Fulbourne Road, London E17 4FF

- 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 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Carlton James (Ratio 1.5 LLP) against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 22/0078, dated 12 January 2022, was refused by notice dated 30 March 2022.
 - The development proposed is Prior approval for the construction of roof extensions to existing part two, part four and part five storey detached building in commercial or mixed use to create a fifth and sixth storey to the four-storey element and sixth storey to the five-storey element to facilitate 7 self-contained units (4x1-bed and 3x2-bed) (Class C3) along with associated cycle/bin storage and 2 car parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The prior approval application form did not provide a description of the development proposed. Instead, a cross reference was made to the submitted plans and a design report document. In Part E of the appeal form it is stated that the description of development has not changed but, unlike the application form, a description is provided. This appeal form description matches that provided on the Council's decision notice. Therefore, I have used this description in the banner heading above.
3. The Council's decision notice includes references to Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The application form clearly refers to Schedule 2, Part 20, Class AA of the GPDO. Given this, the nature of the appeal site and host building and, looking at the evidence before me as a whole, I am satisfied that the application was made in respect of Part 20 Class AA, rather than Part 1 Class AA, development. I have determined the appeal on this basis.

Background and Main Issue

4. Class AA of Part 20 in Schedule 2 of the GPDO establishes that new dwellinghouses on detached buildings in commercial or mixed use are permitted development. However, these provisions are subject to restrictions, limitations and conditions.

5. The local planning authority (LPA) may refuse the application where it considers that the proposed development does not comply with the conditions, limitations or restrictions specified in Part 20 as applicable to the proposed development. The application may also be refused where it is considered that the developer has provided insufficient information to enable the LPA to establish whether the proposed development complies with those same conditions, limitations and restrictions.
6. In summary, the Council contend that the commercial uses within, permitted within or that have occupied the host building do not comply with the Part 20, Class AA conditions, limitations and restrictions and that, consequently, the appeal proposal is not permitted development.
7. The main issue is, therefore, whether the proposal would be permitted development, having regard to the requirements set out within Schedule 2, Part 20, Class AA of the GPDO.

Reasons

8. Spring House is a detached multi-storey building. On the ground floor the building includes 2 commercial units identified on the submitted plans as "Commercial Unit B1" and "Commercial Unit B2". Elsewhere in the building there are flats.
9. The operation of paragraph AA.1(c) of Part 20 is such that development is not permitted if on 5 March 2018 the building to which the proposal relates was in a use *other than* certain allowed for use classes of development or certain combinations of those uses. Those use classes of development or certain combinations thereof being classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), B1(a) (offices), a betting office, pay day loan shop or launderette and, C3 (dwellinghouses).
10. The use classes referred to are those as set out within the Schedule to the Town and Country Planning (Use Classes) Order 1987 as in force on 5 March 2018 (the Use Classes Order).
11. On 5 March 2018 commercial unit B1 was occupied by "Saltcave" and commercial unit B2 was vacant but, was later occupied by "Role2Play" at a point from April 2018 onwards. There is no disagreement between the main parties that Saltcave was, under the provisions of the Use Classes Order in force at the time, within use class D1. Commercial unit B1 was therefore in a different use to those that I have set out above.
12. Therefore, on 5 March 2018 the building was in a use *other than* that which is permitted by paragraph AA.1(c). Consequently, the proposed development does not comply with the conditions, limitations or restrictions specified in Part 20 and, does not benefit from the permitted development right afforded by it.
13. In failing to comply with the limitations at paragraph AA.1(c), the proposal would not amount to permitted development for this reason alone. Whether or not the proposed development would comply with other conditions, limitations and restrictions within Part 20 is not determinative.
14. The appellant has submitted to me reasons why they consider conditions, limitations and restrictions within Part 20 would be complied with. This includes that no change of use has taken place within the ground floor commercial units

since they obtained their original flexible planning permission nor have those uses been abandoned and, that on 5 March 2018, no more than one of the commercial units was occupied in a class D1 use. However, none of the matters put to me alter that on 5 March 2018 unit B1 was operating within a D1 use and the building was, therefore, in a use other than that which is permitted by paragraph AA.1(c). Although the appellant submits that it is the use of commercial unit B2 that is the more critical, for the reasons set out above, the use of commercial unit B1 is determinative.

15. For these reasons, the proposal would not be permitted development, having regard to the requirements set out within Schedule 2, Part 20, Class AA of the GPDO. Given these findings, it is not necessary for me to consider the proposal in further detail against other conditions, limitations and restrictions within Part 20 Class AA including considerations in relation to prior approval set out at paragraph AA.2.

Other Matters

16. The appellant has submitted to me some correspondence held between them and the Council including that which indicates that the case officer had recommended approval of the proposed development but that this had not been accepted by their line management. However, the main issue is whether the proposal would be permitted development. This is a legal test and, as such, matters related to the Council's handling of the case are not decisive.

Conclusion

17. For the reasons given above, I conclude that the appeal is dismissed.

H Jones

INSPECTOR