



Appeal Decisions

Site visit made on 23 May 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal A Ref: APP/J1915/W/22/3292976

Collier House, Mead Lane, Hertford SG13 7AX

- 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.
 - The appeal is made by Mr Richard Mordain of Tuner and Co (Glasgow) Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/1834/ODPN, dated 7 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is for a change of use from office use (Class B1(a)) to residential use (Class C3) to create 10 one bedroom flats and 7 two bedroom flats.
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Appeal B Ref: APP/J1915/W/22/3303513

Collier House, Mead Lane, Hertford SG13 7AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Richard Mordain of Tuner and Co (Glasgow) Ltd against East Hertfordshire District Council.
 - The application Ref 3/21/3006/FUL, is dated 29 November 2021.
 - The development proposed is for the erection of access ramp and stairs to create accessible route to widened towpath (2 metres) and external alterations to conservatory and window openings.
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Decision

1. **Appeal A** is dismissed.
2. **Appeal B** is allowed and planning permission is granted for the erection of access ramp and stairs to create accessible route to widened towpath (2 metres) and external alterations to conservatory and window openings at Collier House, Mead Lane, Hertford SG13 7AX in accordance with the terms of the application, Ref 3/21/3006/FUL, dated 29 November 2021, subject to the conditions in the attached schedule.

Preliminary Matters

3. The description of development for **Appeal A** cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. The latter more accurately reflects the scope of the proposed plans which were submitted, consulted upon, determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon that latter description for the purposes of the heading above.

4. The Council has highlighted that the description of the development in respect to **Appeal B** has also changed. However, the amended description to incorporate the widening of the towpath to 2 metres instead of 1.8 metres as referred to in the application form has been agreed by both parties, along with the amended plans. Therefore, in the interests of clarity I rely upon the agreed description for the purposes of the heading above and paragraph 2 of my Decision.
5. Office to dwellinghouse conversions are permitted development under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Under paragraph O.2 of the GPDO, the developer is required to apply to the Local Planning Authority as to whether prior approval is required.
6. The prior approval matters are concerned with transport and highway impacts of the proposed development; contamination risks on site; flooding 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.
7. The Council refused to grant prior approval for the scheme under Class O of the GPDO, as they considered the proposal had transport and highway safety implications, failing to provide safe access for pedestrians. The Council further considered that operational development was also required in order to provide adequate natural light in habitable rooms of the proposal, which cannot be approved under the prior approval regulations.
8. Paragraph W (10)(b) of Part 3 of Schedule 2 of the GPDO is clear that applications for prior approval should be determined having regard to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. I have determined **Appeal A** on this basis.

Background and Main Issues

9. The appeal site is a three-storey brick building currently in use as an office located at the northern end of Mead Lane industrial estate, adjoining the south bank of the River Lea. The site is accessed from Mead Lane via an unnamed accessway which runs through the industrial estate, although there is also a pedestrian access from the towpath which runs along the riverside.
10. A previous appeal¹ at the site, also for prior approval, was dismissed as the Inspector found that the development would not provide safe and suitable access for pedestrians, concluding that the scheme would have an unacceptable impact on highway safety. Following the appeal, the appellant submitted a planning application² which was approved by the Council, for improved access to the towpath to the north of the appeal site and adjacent to the River Lea. However, this permission was never implemented and has now lapsed, although the details are similar to that currently proposed under **Appeal B**.
11. The main issue in regard to **Appeal A** is whether sufficient information has been provided to demonstrate that the proposed development complies with

¹ PINS Ref: APP/J1915/W/19/3223464

² East Hertfordshire District Council Planning Ref: 3/19/1412/FUL

condition O.2 (1) (a) of Part 3 of Schedule 2 of the GPDO regarding transport and the highway impacts of the proposed development, and condition O.2 (1) (e) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

12. The main issues of **Appeal B** are the effects of the proposal on i) the character and appearance of the area; ii) the neighbouring amenity and iii) the accessibility of the building.

Reasons

13. In regard to **Appeal B** the Council have indicated that had they determined the application, they would have granted planning permission for the proposed scheme. This was on the basis that the application replicated the previously allowed scheme which lapsed in September 2022. As such they do not seek to contest the appeal, given they have found no harm from the proposed scheme. In regard to the effects of the proposal on the character and appearance of the area, the neighbouring amenity and the accessibility of the building, I would concur with the Council's opinion that there would be no harm as a result of the proposal, as I have been presented with no substantive evidence to reach an alternative view. Subject to the conditions as set out in the attached Schedule, the proposal would be acceptable.
14. I now turn to **Appeal A**. The Framework identifies that opportunities to promote sustainable transport modes should be taken up, depending on the type of development and its location, further highlighting that safe and suitable access to these sites should be achieved for all users. Paragraph 111 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
15. The appeal site is located at the end of an unnamed accessway within the Mead Lane industrial estate. The accessway is in constant use for the businesses located on the estate which includes uses such as steel fabricators, car repairs and a haulage company (Matthews Haulage) which is located in close proximity to the access of the proposed site. The existing office can be accessed from the north and south of the site. The south access is via the aforementioned accessway, while the northern access is along a towpath running adjacent to the River Lea and is pedestrian access only. Neither route is illuminated, and the unnamed accessway is a narrow route which does not benefit from a pavement.
16. The previous appeal was dismissed as the Inspector found that the development would have an unacceptable impact on highway safety, opining that whilst *'Collier House is favourably located to access town centre amenities, the poor pedestrian environment could deter future occupiers from walking to the town centre, despite the short distances involved. I conclude that the use of this service road by pedestrians would be highly unsatisfactory and likely to have an adverse effect on their future safety.'* I have no evidence before me to highlight that there has been any change in circumstance for either access under which the previous scheme was assessed.
17. The County Highway Authority maintain their concerns that the proposal would have implications for the free and safe flow of public highway users, and future occupiers of the development, including those with mobility issues. As well as

the ability to access the site by sustainable travel modes other than the private motorcar. As part of the application, the appellant submitted a revised Transport Statement³ (TS) which included traffic/pedestrian surveys undertaken around the appeal site. Unsurprisingly, given the industrial nature of the surrounds and lack of pavement, the surveys highlight that a total of 872 vehicular movements (89%) took place at the entrance to the unnamed accessway, with only 109 pedestrian and cycle movements (11%) in the same 12-hour period.

18. During my site observations there was a distinct lack of pedestrian activity, whilst there were several large vehicles utilising the accessway. Furthermore, the accessway appeared heavily parked, reducing passing points which would require pedestrians to venture into the road to negotiate parked vehicles given the absence of a pavement. The higher percentage of vehicular movements in this location, would result in conflict between vehicle and pedestrian users along the accessway effecting the pedestrian safety of future occupiers. This conflict would be further exacerbated for pedestrians at the southern access of the appeal site, given its close proximity to the access for the existing haulage firm.
19. However, the TS suggests that the primary pedestrian access will be the traffic free towpath to the north of the site, with the southern accessway being secondary, should pedestrians choose this route. The traffic/pedestrian surveys highlight that a significant number of pedestrians and cyclist already use the towpath. The TS indicates a total of 359 pedestrians and 51 cyclists were recorded in the 12-hour period. This included 37 pedestrians and cyclist movements between 1700-1900 hours, when it was dark.
20. In allowing **Appeal B**, these works would enable a new ramped access and steps to be provided at the site, allowing better more accessible pedestrian connections to the towpath route. Furthermore, the associated works to widen the towpath to 2 metres outside the appeal site would also significantly improve pedestrian links. The appellant has indicated that a negatively worded condition and/or a planning obligation could be used to secure the works are undertaken before the scheme subject to **Appeal A** is occupied.
21. Furthermore, the appellant indicates that the works to the towpath would be undertaken in conjunction with works at the adjoining site, where planning permission has been secured on appeal⁴ for 375 residential dwellings, including associated works to access, open space and landscaping. However, I have no evidence before me in regard to any approved works associated with either external lighting and/or improvements to the towpath at the adjoining site.
22. Whilst the principle of the works to the towpath have been accepted by the Canal and River Trust (CRT), who could undertake the towpath improvements under their permitted development rights, they are clear that the towpath should not be relied upon as a primary access to the site. Nor would the CRT accept the location of any lighting bollards on land within their ownership.
23. Given these issues, I share the previous Inspectors' concerns regarding the suitability of the towpath for regular usage, as this route would remain largely unlit, and where the towpath adjoins the appeal site, would be too narrow for

³ Prepared by Patrick Parsons Ltd dated June 2021 Ref: A21134 V2.0

⁴ PINS Ref: APP/J1915/W/19/3234842

multi-user routes, particularly in respect to future occupiers who might have pushchairs or mobility issues.

24. Even if I was to accept the use of a Grampian condition or suitably worded planning obligation, the proposed improvement works to the towpath do not outweigh the harm I have identified in respect to the highway safety issues associated with the pedestrian access along the unnamed accessway to the south of the site.
25. Whilst I acknowledge that the appeal site is located in a relatively sustainable location, the lack of pavement along the unnamed accessway, the uncertainty in respect to the improvements to the towpath, and the unlit nature of both routes is such that travelling by more sustainable means such as walking or cycling would be unlikely, particularly for occupants with mobility issues or with young children, and especially in the dark or during inclement weather. As such, the proposal would not provide safe and suitable access for pedestrians, resulting in significant adverse transport and highways impacts contrary to paragraphs 110, 111 and 112 of the Framework.
26. In regard to the operational development required to provide larger window openings to ensure adequate natural light in all habitable rooms, the appellant has indicated a Grampian condition could be attached to any approval. This would secure that the ramped access, external alterations to the window openings and the improvements to the towpath, can be delivered before the scheme subject to **Appeal A** is occupied. I have considered that the use of the negatively worded condition to prevent occupation of the proposed dwellings until the approved works have been carried out, is an obvious solution to allowing the change of use to occur.
27. However, even if the Grampian condition could secure the works necessary to address condition O.2 (1) (e) of Part 3 of Schedule 2 of the GPDO, this does not negate the harm I have identified in respect to highway safety. Given that the development would not provide safe and suitable access for pedestrians, the scheme would have an unacceptable impact on highway safety, and is therefore not permitted development, under O.2 (1) (a) of the GPDO.

Conditions

28. I have considered the Councils suggested conditions in respect to **Appeal B** having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary for the sake of consistency, brevity, clarity and to ensure that they meet the tests in the Framework.
29. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. I also have imposed a condition in respect to materials to match those stated on the application form in order to ensure an acceptable visual effect.
30. I have attached conditions to provide soft treatments to the bank, verge and hedge and the site boundaries which should be provided and maintained thereafter to protect the character and appearance of the area, whilst also meeting with CRT specifications.

31. There is a need to protect biodiversity and nesting birds given their ecological value. I have imposed the condition that incorporates the requirements set out in the Council's suggested conditions in regard to this matter.
32. Conditions controlling the use of external lighting are also required, in the interest of the appearance of the proposal and impacts on ecology and biodiversity.

Conclusion

33. In regard to **Appeal A** I have found the proposal would not meet the conditions of paragraphs O.2 and W.(3) of the GPDO in respect of transport and highway safety at the site. Prior approval is required for this matter, and I have found, based on the evidence before me, that it should not be granted. The proposal is not therefore permitted development and **Appeal A** is dismissed.
34. In regard to **Appeal B** the proposal would accord with the development plan, when read as a whole and the Framework. Having considered all material considerations and other relevant matters raised, I therefore conclude that **Appeal B** is allowed.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3449 01 B; 3449 23 C; 3449 24 A; 3449 28 A; 3449 29 and PP101 P8.
- 3) The external materials of construction and finishes for the ramp and building works hereby permitted shall match those stated on the application form, unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to the commencement of works to the towpath, detailed plans shall be submitted to and approved in writing by the Local Planning Authority illustrating the dimensions of the improvements to the towpath relative to the bank, verge and hedge. The information shall also provide details of boundary treatment, soft and hard landscaping including works required for the extended towpath width and linkages to the towpath at the site boundaries. The works shall be carried out in accordance with the approved details and maintained thereafter.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No vegetation clearance shall be undertaken during the bird nesting season (March to August inclusive) unless a checking survey including a working method statement has first been undertaken by a suitably qualified ecologist to confirm the absence of nesting birds. The checking survey and working method statement shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 7) Prior to the commencement of works to the ramp and stairs, details of any proposed lighting shall be submitted to and approved in writing by the Local Planning Authority.
- 8) No lighting shall be installed along the towpath without the prior consent of the Local Planning Authority.

END OF SCHEDULE