



Appeal Decisions

Site visit made on 24 July 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Appeal A Ref: APP/J0405/W/22/3304155

Target House, Gatehouse Road, Aylesbury HP19 8ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO).
 - The appeal is made by Mr Bernard Margulies of BMR London Ltd against the decision of Buckinghamshire Council.
 - The application Ref 22/00936/PADDC, dated 23 February 2022, was refused by notice dated 25 May 2022.
 - The development proposed is the construction of a double storey roof extension for 34 new dwelling houses above Target House.
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Appeal B Ref: APP/J0405/W/22/3310176

Target House, Gatehouse Road, Aylesbury HP19 8ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Bernard Margulies of BMR London Ltd against the decision of Buckinghamshire Council.
 - The application Ref 22/02133/PAPCR, dated 9 June 2022, was refused by notice dated 29 September 2022.
 - The development proposed is described as 'the change of use to the existing 2nd floor office space of Target House to provide 18no. residential units.
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Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and prior approval is deemed to be granted under the provisions of Schedule 2, Part 3, Class MA of the GPDO for the change of use to the existing 2nd floor office space of Target House to provide 18no. residential units at Target House, Gatehouse Road, Aylesbury, HP19 8ED in accordance with the terms of the application, Ref 22/02133/PAPCR, dated 28 June 2022 subject to the following conditions;
 - 1) The development hereby permitted must be completed within a period of 3 years starting with the prior approval date.
 - 2) The development hereby permitted shall remain in use as dwellinghouses within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan - TAR SB PR AL 050 P3 and Proposed Second Floor – TAR SB PR AL 120 P1.
- 4) The parking/manoeuvring and cycle storage provision as shown on the approved plans shall be provided prior to the first occupation of the development hereby permitted and shall thereafter be permanently retained.

Preliminary Matters

3. Appeals A and B relate to the same building. Therefore, I have dealt with the appeals together. However, as each appeal relates to separate parts of the GPDO, I have considered them independently of each other.
4. In respect of Appeal A, I have amended the description of development as stated on the planning application form as this includes explanatory details which are superfluous and do not relate to an act of development.
5. The provisions of the GPDO do not require regard to be had to the development plan. However, in determining Appeal A, I have had regard to Policies BE2 and BE3 of the Vale of Aylesbury Local Plan 2021 (Local Plan) together with the National Planning Policy Framework (the Framework) in so far as they are relevant material considerations to the matters of external appearance and neighbouring amenity.
6. Turning to Appeal B, section one of the prior approval application form has not been completed. I have therefore taken the appellant's details from the appeal form which is also consistent with the Council's decision notice.

Background and Main Issues

Appeal A

7. Schedule 2, Part 20, Class AA of the GPDO permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building. Development is permitted subject to limitations, conditions and the requirement that the developer must apply for prior approval for a range of matters.
8. The Council refused to grant prior approval in relation to the external appearance of the building and neighbouring amenity. In relation to the loss of light, the appellant has submitted an updated Daylight and Sunlight Assessment (DSA) dated July 2022 with the appeal. The appeal procedure has provided an opportunity for the parties to comment on that assessment and I have taken account of all the evidence submitted in relation to this in my determination of this appeal.

Appeal B

9. Appeal B relates to Schedule 2, Part 3, Class MA of the GPDO which permits, subject to certain limitations and conditions, the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a dwellinghouse.
10. Schedule 2, Part 3, Paragraph W (3) of the GPDO states that the LPA may refuse a prior approval application, where, in the opinion of the authority, the

proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. The application was refused by the Council on the basis that the proposal would not comply with the limitations of the permitted development criteria.

11. Taking into account the above and having regard to the evidence before me, the main issues are:

- Appeal A - Whether the appeal proposal would comply with Schedule 2, Part 20, Class AA of the GPDO, having regard to the effect of the proposal on the external appearance of the building and the amenity of neighbouring premises with particular regard to overlooking, privacy and the loss of light.
- Appeal B - Whether the appeal proposal would comply with criteria MA.1(1)(c) of Schedule 2, Part 3, Class MA of the GPDO.

Reasons

Appeal A

12. The appeal building comprises a square shaped, detached former office building and occupies a prominent position on Gatehouse Road – a busy route through the area. The site's immediate setting is informed by a diverse land use including residential development, office buildings, light industrial units, and commercial premises which is generally of a lower density. This provides for a varied sub-urban character and appearance.

External appearance

13. The appeal development relates to the construction of a double storey roof extension. The overall height of the resulting six-storey building would exceed that of both existing and proposed neighbouring development by a notable margin. Whilst the stepping-in of the extension from the outer face wall of the appeal building would reduce the mass of the upward extension, the vertical emphasis of the proposal would distort the form and proportions of the existing building. Further, the resulting building would be conspicuously tall within the context of its surroundings and thus would be perceived as an overly dominant and unduly prominent intrusion of built form. This would unacceptably harm the external appearance of the building.

14. In coming to this view, I have had regard to the appellant's submissions regarding the design approach, particularly that the external detailing including window proportions, deep recesses and external materials have sought to reflect the 'Brutalist' architectural style of the appeal building. I am also mindful that the approval matters relevant to Part 20, Class AA as set out in the GPDO do not refer to the surrounding area. However, in referring to the external appearance of the building, the wording of paragraph A.A.2(1)(e) includes the design and architectural features of the principal elevation and any side elevation that fronts a highway. Therefore, the above wording suggests to me that it is not appropriate to consider the external appearance of the appeal property in isolation and I have not done so.

15. Accordingly, I find that the proposed development would harm the external appearance of the appeal building and thus would not comply with Schedule 2,

Part 20, Class AA of the GPDO. Therefore, in so far as it is relevant to the matter of external appearance, I find that the appeal proposal would be inconsistent with Local Plan Policy BE2 where it seeks to preserve and enhance the quality of the built environment. It would also be inconsistent with the design objectives of the Framework.

Overlooking, privacy and the loss of light

16. The appeal site is bound to the north-east by residential development which is generally two storeys with relatively modest gardens located to the rear. The Council's evidence indicates that permission has been granted for the erection of an apartment building comprising of 116 units on the land immediately adjacent to the appeal site, referred to within the appeal as Verney House. Whilst the evidence indicates that the consented building would be six-storeys high in part, it would still sit below the combined height of the appeal building and proposed roof extension. There is some dispute between the parties regarding the intervening distances between the appeal building and the existing/proposed neighbouring built form. However, it is clear from the submitted drawings that the area of undeveloped space around the perimeter of the appeal building would provide considerable separation distance between it and the neighbouring properties.
17. From within the proposed roof extension, I recognise that there would be direct views towards the dwellings located at No 27 Owen Place, No 30 Cubitt Street and the new Verney House development. Given the existing relationship between the appeal building and neighbouring dwellings, it is likely that there would already be a degree of overlooking from within the upper floors of the appeal building. Although the proposed roof extension would be more elevated, the lines of sight would be broadly the same. Under these circumstances and given the intervening distance and urban setting, I am not persuaded that the roof extension would result in harmful overlooking of either the outdoor amenity space or habitable room windows of the neighbouring development such that the privacy of the residents would be materially affected.
18. In relation to the loss of light, the Council's decision notice sets out that there was insufficient comprehensive detail submitted to assess the effect of the proposal on the neighbouring Verney House development. The updated DSA has been prepared in accordance with standard industry guidance¹ (BRE) and assesses the effect of the proposal on the north-west elevation of Verney House together with several properties on Cubitt and Blake Street. The DSA concludes that the daylight and sunlight values for these properties would be above the minimum recommendations set out in the BRE guidance and thus would not harm the amenity of adjoining premises in terms of receivable light. Based on the information before me, I see no reason to doubt the accuracy of this assessment
19. I have regard to the third-party representation in relation to living conditions. However, given my findings as set out above and the fact that Blake Street is located a greater distance from the appeal site, I do not consider that the proposal would result in the loss of light to these properties. Further, whilst I recognise the concerns relating to noise disturbance, no compelling evidence

¹ Building Research Establishment (BRE) Report 'Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice (3rd Edition, 2022)

has been provided to demonstrate that the proposal would be harmful in this regard. Thus, the concerns expressed do not lead me to a different conclusion.

20. For these reasons, I find that the appeal proposal would not adversely affect the amenity of neighbouring premises which particular regard to overlooking, privacy and the loss of light. It would therefore comply with Schedule 2, Part 20, Class AA of the GPDO and would also be consistent with Local Plan Policy BE3. Amongst other aspects, this policy seeks to protect the amenity of existing residents. It would also be consistent with the Framework's objectives in relation to securing a high standard of amenity for existing residents.

Appeal B

21. The area of floorspace subject to the proposed change of use measures 840 square metres and occupies the second floor of the appeal building. MA.1 (1)(c) sets out that development is not permitted by Class MA if the cumulative floorspace of the existing building changing use exceeds 1500 square metres. The Council does not dispute the proposed floorspace area. However, it is their submission that, in combination with other permitted development relating to separate floors of the appeal building, the cumulative floorspace of the existing building changing use would exceed 1500 square metres.
22. In contesting the Council's interpretation of the legislation, reference is made by the appellant to the case of *Mansell v Tonbridge and Malling BC* [2017] EWCA City 1314. This judgment relates to Class Q of the GPDO and therefore does not expressly address the term cumulative for the purpose of Class MA. Nevertheless, it does indirectly consider this matter. Given the distinct similarities in the drafting of Q.1 (b) at the time of the judgment and MA.1 (1)(c) as it is currently reads, I find that the ruling is both relevant and of assistance to the consideration of the appeal proposal.
23. A "building" as defined in Article 2 of the GPDO includes any structure or erection and, except in Class F of Part 2, Classes A to I of Part 14, Classes A, B and C of Part 16, Class T of Part 19 and Class ZA of Part 20 of Schedule 2, includes any part of a building. Despite the reference to curtilage, in the absence of any compelling evidence to indicate otherwise, I have no reason to doubt that the above definition would not be applicable to Class MA.
24. In considering the interpretation Q.1 (b), the Court of Appeal in *Mansell* found that the wording of the GPDO relates to a single act of development where the building in question, or part of the building is changing use. It is noted that paragraph MA.1 (1)(c) replicates the wording considered by the Court of Appeal. Therefore, in applying the *Mansell* reasoning, paragraph MA.1 (1)(c) would operate to restrict the overall area changing use within a single act of development to a maximum of 1500 square metres. In this case, the area changing use would equate to 840 square metres of floorspace, which taken as a single act of development would not exceed 1500 square metres.
25. Taken in isolation, and having regard to the explanatory memorandum, I recognise that the wording of MA.1 (1)(c) could be read as the Council has interpreted in this case. However, I am mindful that the GPDO must be considered as a whole when interpreting its provisions. Further, it is difficult to ignore that there appears to have been a deliberate omission within the legislation of a provision similar to sub-paragraph Q.1 (d) which specifically prevents the aggregation of successive changes of use through separate acts of

development. Had the legislation intended previous changes of use within Class MA to be considered cumulatively, it seems reasonable to assume that a provision along the same lines as that in Class Q.1 (d) would have been included.

26. Therefore, based on the evidence, I find that the proposed development would comply with MA.1 (1)(c) of Schedule 2, Part 3, Class MA of the GPDO.

Conditions

27. Any prior approval which is deemed to be granted under the provisions of Schedule 2, Part 3, Class MA of the GPDO is subject to the conditions set out in Paragraph MA.2 (5) and (6). These require respectively that the development is completed within a period of three years starting with the prior approval date and that any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.
28. Paragraph W (13) of Schedule 2, Part 3 of the GPDO indicates that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. I have had regard to the various planning conditions that have been suggested by the Council and have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
29. In addition to the standard conditions above, to manage the transport impacts of the development I have imposed a condition requiring the provision of the parking and manoeuvring area together with cycle storage as detailed on the submitted plan to be provided and retained thereafter.
30. The available evidence does not suggest that the site is in an area at risk of flooding and therefore notwithstanding the Council's recommendation, a condition requiring a flood evacuation plan is not necessary. A condition requiring a Servicing Management Plan has also been recommended in the interest of highway safety. However, there is no compelling detail which would indicate why this is necessary. Based on my own observations of the site, I am satisfied that there would be sufficient off-road space within the site to accommodate these vehicles without effecting movements on the highway. I have therefore not imposed this condition.

Conclusion

31. Accordingly, Appeal A would harm the external appearance of the appeal building and would therefore not accord with Class AA, Part 1 of Schedule 2 of the GPDO. Appeal A is therefore dismissed. The area of floorspace subject to Appeal B would not exceed 1500 square metres and would therefore comply with MA.1 (1)(c) of Schedule 2, Part 3, Class MA of the GPDO. Appeal B is therefore allowed.

H Wilkinson

INSPECTOR