



Appeal Decision

Site visit made on 18 December 2023

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th JANUARY 2024

Appeal Ref: APP/E5900/W/23/3327572

Ground Floor, 82-102 Hanbury Street, London, E1 5JL

- 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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Graften Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/23/00455, dated 1 March 2023, was refused by notice dated 25 April 2023.
 - The development proposed is convert existing vacant offices on the ground floor into 1 flat.
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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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to convert existing vacant offices on the ground floor into 1 flat at Ground Floor, 82-102 Hanbury Street, London, E1 5JL in accordance with the application PA/23/00455, dated 1 March 2023 and the details submitted with it, and the following conditions:
 - 1.) The development shall be carried out in accordance with Dwg Nos 209-00-001, 209-06-001B, 209-08-001B, 209-08-002B, and 209-08-003B in so far as it relates to the proposed change of use only, and for the avoidance of doubt does not include the cycle shelter.
 - 2.) The approved residential unit shall not be occupied unless it has first been constructed to ensure it is adequately protected against internal noise from nearby commercial uses and that:
 - a. The construction accords with BS8233 'Sound Insulation and Noise Reduction for Buildings';
 - b. Internal ambient noise levels in habitable rooms except bedrooms do not exceed 35dB LAeq,16 hour, between the hours 07:00 - 23:00 and within bedrooms do not exceed both 30 dB LAeq, 8 hour and LAmx 45 dB more than 10 times between the hours 23:00 - 07:00.
 - c. At any junction between adjoining commercial uses, the internal noise insulation level is designed to take account of the noise levels generated in the noise source so that in habitable rooms the typical worst case (i.e. 90th

percentile LAeq,15 min level of intruding noise) is at least 10 dBA below the equivalent prevailing LAeq,15 min in the receptor.

d. Party walls and floors separating the dwelling must meet sound isolation requirements set out in Approved Document Part E.

- 2.) The development shall not be occupied until details of cycle parking have been submitted to and approved in writing by the Local Planning Authority and provided in accordance with the approved scheme. The cycle parking provided shall thereafter be retained and made available to the occupiers of the development.

Preliminary Matters

2. Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the change of use of commercial, business and service uses falling within Class E of Schedule 2 to the Use Classes Order¹ (UCO) to a use falling within Class C3 (dwellinghouses) of Schedule 1 of the UCO.
3. Class MA does not permit operations required to facilitate the change of use. The parties' views were sought in this respect and I have taken the comments received into account in my decision. Notwithstanding the Council's view in this regard, the lockable cycle shelter shown on the submitted drawings is a building operation and does not therefore form part of my consideration in this case. The prior approval matter relating to the transport impacts of the development will be assessed below.
4. The appellant has requested that I consider a letter from Waldrams Ltd² which indicates that the Internal Daylight and Sunlight Report (IDS Report) assessed the proposal on the basis of the obscured windows at the premises. The Council suggests that I do not accept this information. However, as this letter seeks to clarify an issue raised by the Council and does not alter the findings of the Report, to accept it would not be unfair to those that should have been consulted of the additional information. Indeed, the Council has had the opportunity to comment on this matter as part of this appeal and I have taken the comments made into account in this decision.

Main Issues

5. The main issues are:
- whether adequate natural light would be provided to the habitable rooms of the new flat, notably the Master Bedroom and Living, Kitchen and Dining space, and
 - whether the transport impacts of the development are acceptable, particularly to ensure a safe site access.

¹ Town and Country Planning (Use Classes) Order 1987 as amended

² Dated 26 April 2023

Reasons

Natural Light

6. The appeal property is located on the ground floor of a 5 storey building on the corner of Hanbury Street and Spelman Street, within the Brick Lane and Fournier Street Conservation Area (CA). It is located close to the back edge of the footpath on both streets.
7. Paragraph W.(2A) of Part 3 of the GPDO provides that prior approval must be refused if adequate natural light is not provided in all habitable rooms. The term 'habitable rooms' are 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 (Part 3, paragraph X of the GPDO).
8. The windows in the ground floor serving the part of the building to which the appeal relates are largely opaque glazed, save for a small portion at the top of the window which is clear glazed. The windows would serve the entrance to the proposed flat, the living, kitchen and dining area and the master bedroom. The bedroom facing onto the rear yard would be served by 2 windows.
9. The provision of adequate natural light is not defined in the GPDO. The submitted IDS Report however assessed daylight and sunlight internally to the proposed ground floor flat using methodologies contained within the Building Research Establishment's Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2022) (the "BRE Guide"). The BRE Guide is widely recognised as the principal guidance when considering daylight, sunlight and overshadowing and is therefore an appropriate document to use when considering these issues.
10. The Report assessed the proposal using the Illuminance Method and found that the median illuminances set out within the UK National Annex for bedrooms, living rooms and kitchens were complied with within each of the proposed habitable rooms, despite there being partially opaque glazing within the windows. It also found that the sunlight levels within the habitable rooms met the recommendations within the BRE Guide.
11. Whilst the Council do not dispute the findings of the IDS Report it is concerned that the relationship to the pavement of the master bedroom window and those serving the living, kitchen and dining area would mean that the intended future occupiers would be likely to close their blinds or curtains to maintain privacy. It is clearly open to the occupiers to do this, but given the level of opaqueness of the glass, it would not be necessary as activities on the pavement or within the new flat would not be apparent from inside or outside the accommodation. Furthermore, privacy is not a matter for consideration under Class MA, nor is outlook.
12. The submitted evidence demonstrates that the habitable rooms would receive adequate natural light and in this regard the proposal complies with the condition relating to natural light to habitable rooms within Class MA.

Transport Impacts

13. The Council has indicated that to comply with its parking standards set out within the Tower Hamlets Local Plan 2031 Managing Growth and Sharing the

Benefits (Local Plan) that at least one long stay cycle parking space should be provided. It has indicated that without the lockable cycle shelter that the proposal would conflict with this requirement.

14. The procedure for prior approval is set out in the GPDO. This procedure was amended in April 2014 to make clear that the local planning authority must only consider the National Planning Policy Framework (Framework) to the extent that it is relevant to the matter on which prior approval is sought.
15. In this case Chapter 9 of the December 2023 Framework seeks to promote sustainable transport. The enclosed rear yard would be a safe and secure place for occupiers of the flat to store at least one cycle. Whilst the space would not be covered as part of this appeal, the opportunity to provide safe cycle parking where occupiers could lock their bike(s), which could be accessed through the communal area or via the external gate would promote cycling opportunities for the intended future occupiers, as required by paragraph 108 of the Framework. Such a matter could be secured by a suitably worded condition.
16. The appeal site is within a central area with good access to shops, services and facilities, including public transport with bus stops and Whitechapel Station nearby. Such accessibility is reflected in the PTAL rating of 5.
17. It is submitted that the proposal would result in fewer vehicle movements than the commercial use of the premises which is not disputed. The proposal includes no off-street car parking and the appellant has indicated that it would be car-free. The Council seeks to control this matter through the imposition of a planning condition and has drawn my attention to development plan policies in support of this.
18. There are double yellow lines outside of the appeal premises. Parking spaces are located on the opposite side of Hanbury Street which are within a Controlled Parking Zone (CPZ) where restrictions are in place Monday to Friday between 08.30 and 17.30 and Sunday between 08.30 and 14.00. There are also spaces in Spelman Street covered by a CPZ with restrictions in place Monday to Friday between 08.30 and 19.00 and on Sunday between 08.30 and 14.00.
19. On my visit which was made mid-afternoon I observed that the car parking spaces in Hanbury Street were busy with few spaces available. The same was true for parking in Spelman Street. Whilst this was a snapshot in time, I have no evidence before me to indicate that such circumstances are not the norm. In the event that occupiers of the flat had a car or cars, it is likely that they would add to the parking pressure in the area.
20. However, I have little substantive evidence to demonstrate that the additional cars that would be associated with the development would result in unacceptable transport impacts or result in an unsafe access to the development which are the matters before me in this appeal. There is nothing within the Framework requiring that development is car-free, and the location of the appeal site is likely to influence prospective occupiers on whether or not to have a car in this highly accessible location. The close proximity of the appeal site to public transport and shops and services would allow occupiers of the flat a real choice of how they travelled, whether that be on foot, cycle, bus or train which would support the Framework's objective relating to sustainable transport.

21. No concern has been raised about the site access, and from my observations I have no reason to find differently. Given the above, I consider that the transport impacts of the development are acceptable.

Other Matters

22. The Brick Lane and Fournier Street CA contains a large number of architecturally and historically significant buildings including a group of 18th century houses around Fournier Street which the Conservation Area Appraisal describes as 'the most important early Georgian quarter in England, and includes Christ Church Spitalfields, designed by Nicholas Hawksmoor'. Brick Lane has a diverse mix of fashion, art, entertainment, retail and start up business and is vibrant in character. The area contains Spitalfields and Brick Lane Markets and over the years has been settled into by different cultures and communities.
23. Its significance derives from its architecture, history and evolution, retaining a domestic scale of development and a mix of uses. The appeal property is a modern building and whilst of a greater mass than nearby domestically scaled buildings, its siting close to the back edge of the pavement reflects the appearance of the area, and its mixed use reflects the character of the area.
24. A residential use of this part of the building would have a neutral effect upon the Brick Lane and Fournier Street Conservation Area and would preserve its character and appearance in accordance with Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990. The sustainability of the CA would also be preserved as required by MA.2.(2) of the GPDO. It is noteworthy that the Council found similarly in this regard.
25. The other matters covered within MA.2. (2) are not in dispute and from the evidence before me, I have no reason to find differently.

Conditions

26. Paragraph W(13) of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
27. Development under Class MA is permitted subject to conditions at Paragraphs MA.2.(5) and (6) which include that the development must be completed within a period of 3 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. The Council has suggested eight conditions it would wish to see imposed should prior approval be granted. As paragraph MA.2.(5) of the GPDO stipulates that the development shall be complete within a period of 3 years, a separate condition is not required in this regard. The provisions at Paragraph W(12) require that development must be carried out in accordance with the approved details, however in the interest of clarity and certainty I have attached a condition setting out the approved drawings. I have for the avoidance of doubt made it clear that the cycle shelter shown does not form part of the approved drawing.

29. Given the commercial use of part of the larger building on site and nearby properties, a noise insulation condition is necessary to protect the occupiers of the new flat from noise from commercial premises. I have however amended the suggested condition to make it specific to the matters before me, deleting reference to certain matters, including vibration and to the layout of the new flat as the layout submitted is that before me for consideration.
30. Although not referred to by the Council, I note that the appellant is prepared to provide cycle storage upon the site and suggested wording has been provided in this regard. A condition requiring this is necessary to ensure that the transport impacts of the development are acceptable. I have however amended the suggested wording for conciseness.
31. The Council has highlighted policies of its Local Plan and the London Plan it considers relevant to its other suggested conditions. However, the GPDO does not require regard to be had to the development plan.
32. The Council has suggested a car free housing condition which requires a scheme to be submitted, agreed and implemented. Given my findings in respect of transport impacts and on the evidence before me, such a condition is neither reasonable or necessary in this case.
33. There is limited evidence before me to suggest that in the absence of operational development and the use of the larger building that conditions relating to demolition and construction activities, contamination and the requirement for a construction management plan are necessary or reasonable having regard to the prior approval matters relevant and set out in MA.2.(2). It is noteworthy that the Contaminated Land consultee raised no objection to the proposal at the planning application stage.
34. Furthermore, a condition controlling deliveries to, and servicing of the residential use would not be reasonable given the nature and scale of the development and the likely effect such activities would have on the transport impacts of the development outside of the suggested hours, when in all probability there would be fewer vehicles and pedestrians using the highway network than within the hours the Council considers acceptable.

Conclusion

35. For the reasons above, I conclude that the appeal should be allowed and prior approval is granted.

RC Kirby

INSPECTOR