



Appeal Decision

Site visit made on 21 September 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal Ref: APP/Q3115/W/22/3313849

The Piggery, Gravel Hill, Reading RG4 8QL

- 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 ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Wayne Courtnage against the decision of South Oxfordshire District Council.
 - The application Ref 22/S0339/ND1, dated 9 August 2022, was refused by notice dated 7 October 2022.
 - The development proposed is the demolition of B1c workshops and construction of two detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. While the decision notice and other documents state the postcode to be RG4 8QL, the application form incorrectly lists it as RG4 9RH. Following my site visit and review of the appeal site, I have confirmed the correct postcode to be RG4 8QL. The banner heading has been updated to reflect this correction.
3. The application form does not provide a clear description of the development. Therefore, I have used the description used in the decision notice and the appeal form, albeit by removing words which are not acts of development. I have amended the banner heading accordingly.
4. Under Article 3(1) and Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for the development of works for the demolition of any building comprising a single purpose-built detached block of flats or any other single detached building falling within Use Class B1(a, b or c)(subject to limitations and conditions), and their replacement with a purpose-built detached block of flats or dwellinghouse (together with related works). The old building must have existed on 12 March 2020.
5. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the amended UCO) came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). Consequently, the use classes listed in the GPDO (B1(a), B1(b) and B1(c)) have now been superseded and incorporated within Class E (Commercial, business and service uses) of the amended UCO. In this instance, no party will be prejudiced through the implications of the amended UCO or the introduction of Class E.

6. Where an application is made for prior approval for development, the local planning authority may refuse the application where it considers that the proposed development does not comply, or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions that are applicable to such permitted development.
7. The main parties have been invited to submit comments in relation to a related judgment¹. Accordingly, no party has been prejudiced by the inclusion of this judgment in the determination of this appeal. The comments from the parties have been considered in my assessment of the appeal.

Main Issue

8. The Council refused the application on the basis that it does not fall within the permitted development rights within Class ZA, due to non-compliance with restrictions set out in ZA1(b), (f), (k) and (l). It has not considered the proposal against the other restrictions set out in paragraph ZA1.
9. The main issue is whether the proposed development would be permitted development under Schedule 2, Part 20, Class ZA of the GPDO, and if it would, then whether prior approval should be granted.

Reasons

Date of construction

10. The appeal site contains two single storey buildings with an authorised light industrial use (formerly use class B1(c)) with a total floor area of 229 square metres. It is proposed that the new three-storey dwellings will be built on the same footprint as the existing buildings. For clarity, I will refer to the structure which is located closer to Gravel Hill Road as "Building A" and the other further away building as "Building B".
11. Criteria ZA1 (b) of the GPDO states that development is not permitted by Class ZA if the old building was constructed after 31 December 1989. Class ZA (4) confirms that "old building" should be defined as the building proposed for demolition.
12. In relation to Building B, it is common ground between the parties that it complies with Criteria ZA1 (b). However, in relation to Building A, the photographs in the appellant's appeal statement indicate that a substantial element of the roof and walls (i.e. timber cladding, roof covering, internal walls, exterior joinery, materials between the rafters, soffits) etc were removed and rebuilt. It is their evidence that the basic timber/steel frame was retained and repaired, alongside the ground floor slab and foundations. However, the Council has raised concerns about the original frame, questioning whether it was fully replaced or partially replaced with a new steel frame. There is no substantial evidence before me on this issue. Nonetheless, both parties agree that extensive construction work occurred at Building A in 2020.
13. The Street judgement established that whether construction works amount to 'maintenance' or 'rebuilding' is a matter of fact and degree. In the circumstances of that case, what remained of the original structure was so

¹ Street v MHLG & Essex CC [1965] 193 EG 537 (the Street judgement)

little, it was reasonable to hold as a matter of fact that what took place were reconstruction works, rather than repair. The appellant has stated that this judgment is not wholly relevant but has not provided any substantive evidence to support this statement. Given that the judgment focuses on the main disagreement between the parties, I am satisfied that it is relevant when considering the proposed development.

14. Taking into account the above, it can be determined that the old building was constructed after 31 December 1989. The photographs before me indicate that the structure was reduced to a basic timber/steel frame devoid of a roof covering and substantial elements on at least three of the four elevations during the refurbishment works in 2020. Even if this frame was retained, the extent of the renovation work that was done went beyond simple refurbishment or repair. As such, what remained of the original structure was so little, such that the subsequent works should be considered as equivalent to building a new structure.
15. For the reasons stated above, I consider that as a matter of fact and degree, that Building A was constructed after 31 December 1989. For the purposes of the GPDO, limitations are expressed precisely, so are either met or not. The limitation at Criteria ZA1 (b) is not met due to Building A, and thus, development is not permitted.
16. Consequently, the proposed development would not constitute permitted development in respect of Schedule 2, Part 20, Class ZA.

Whether unsafe or uninhabitable due to inaction

17. Criteria ZA1 (f) of the GPDO states that development is not permitted by Class ZA if the old building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the old building stands and it is practicable to secure safety or health by works of repair or works for affording temporary support (and for this purpose keeping the old building vacant does not of itself count as action or inaction).
18. The Council's evidence states that the appeal site became vacant in 2012. As no tenant could be found, the buildings suffered from vandalism, which accelerated their deterioration. In 2016, the Council carried out a site inspection and officers advised the then landowner that the buildings were in poor condition, such that extensive work would be required to bring them back into light industrial use. As a result, the premises were not required to undergo a marketing exercise for continued business use, which was reflected in an outline planning permission (P17/S2516/O) in 2017 (since lapsed). The appellant does not dispute this history of events outlined by the Council or provide any evidence to the contrary.
19. A subsequent discharge of condition application (P19/S4520/DIS) included a contaminated land report, which contains photographs of the site. These photos are from the walkover of the site and includes interior and exterior photographs of both buildings. They illustrate that the buildings were in a deteriorated state. The report also found that there was a moderate potential risk to human health due to the presence of concrete asbestos on site. As such, the findings of the report support the claim that the buildings had been rendered unsafe or otherwise uninhabitable.

20. I have considered the appellant's comments that the buildings were capable for their intended commercial use as workshops, notwithstanding that they were not comparable to modern building standards. Nonetheless, I note that it is common ground between the parties that extensive works were required to bring the buildings back into use. This accords with the evidence and recommendations from the contaminated land report.
21. Based on the evidence provided, I am satisfied that the criteria for development outlined in ZA1 (f) is not met. This conclusion is based on my site observations, the date and significant extent of the past refurbishment works and the planning history of the appeal site. Therefore, the proposal is not permitted.
22. Consequently, the proposed development would not constitute permitted development in respect of Schedule 2, Part 20, Class ZA.

Storey limitations

23. Criteria ZA1 (k) of the GPDO states that development is not permitted by Class ZA if the new building has more than $X + 2$ storeys, where "X" is the number of storeys in the old building.
24. The plans indicate that each of the old buildings are one storey high. They also indicate that the proposed development consists of 2 no 2.5 storey dwellings, which includes a ground floor, a first floor and a second floor with more limited dimensions.
25. With regard to the proposed development, the criteria would limit development if the new building were more than 3 storeys high, given that the old building is 1 storey high. I have considered that Schedule 2, Part 20, Paragraph C (2)² of the GPDO, states that references to a storey does not include any storey below ground level or any accommodation within the roof of a building such as loft space. However, it still remains unclear why the Council consider that this criterion would not be met. The plans indicate that the proposed development would still be limited to 3 storeys.
26. Based on the evidence provided, I am satisfied therefore that the proposed development would not exceed 3 storeys, and thus would not conflict with the limitations set out in this criterion. As such, this part of the proposal would constitute permitted development in respect of Schedule 2, Part 20, Class ZA.

Height limitations

27. Criteria ZA1 (l) of the GPDO states that development is not permitted by Class ZA if the new building has more storeys than the old building and the floor to ceiling height of any additional storey in the new building, measured internally, would at any point be greater than the lower of the floor to ceiling height, measured internally, of any storey in the old building; or 3 metres.
28. It is clear that the proposed development would contain more storeys than the old building. Accordingly, the primary concern relates to the floor to ceiling height of any additional storeys.
29. The existing elevations plans for Building A and Building B do not include any measurements for the floor to ceiling heights of the old buildings. However,

² Interpretation of Part 20

drawing PL-25 does provide a comparison of the proposed development with the old buildings. This plan indicates that the floor to ceiling height of the proposed additional storeys would exceed that of the old building. It also indicates that there would be approximately 2.4 metres between the floor and ceiling of any additional storey in the new building. This would be the lower of the criteria measurements set out in ZA1 (I).

30. Based on the evidence provided, I am satisfied therefore that the floor to ceiling height of any additional storey, measured internally, would be less than 3 metres. Thus, the proposed development would not conflict with the limitations set out in this criterion. As such, this part of the proposal would constitute permitted development in respect of Schedule 2, Part 20, Class ZA.

Other Matters

31. As considerations in relation to prior approval are a follow-on condition stage under paragraph ZA.2, they can therefore only apply if the development is permitted development. As the proposal would fail to constitute permitted development, there is no need to consider whether prior approval should be granted. In relation to the second reason for refusal in the Council's decision notice, an assessment of that matter is not necessary for the same reasons.
32. A number of other issues have been raised by third parties, including access to green space, loss of natural habitat, housing encroachment, access to public services and transport, geology and subsidence, environmental damage, surface water runoff, effects on nocturnal fauna, the proximity to golf club land and the Chilterns AONB, the Kidmore End Neighbourhood Development Plan, increased volumes of traffic and hazards to horses, bike and pedestrian users. However, as the appeal relates to prior approval, the matters for consideration are restricted to those set out in the relevant paragraphs of the GPDO. Therefore, these other issues raised fall outside the matters I can consider.

Conclusion

33. For the reasons given above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR