



Appeal Decision

Site visit made on 4 April 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 JUNE 2024

Appeal Ref: APP/B5480/W/23/3331558

127-133 High Street, Havering, Hornchurch, RM11 1TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Parkhall Estates against the decision of the Council of the London Borough of Havering.
 - The application Ref is J0009.23.
 - The development proposed is the change of use from snooker hall (Class E(d)) to dwellinghouses under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Class MA of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order subject to a number of requirements and conditions.
3. The Council refused prior approval as they considered that the proposed development included works which would not constitute permitted development, would not provide adequate natural light in all habitable rooms of the dwellinghouses, there would be significant adverse highways impacts in relation to refuse and cycle storage, and there would be unacceptable impacts of noise from commercial premises on the intended occupiers of the development. I consider these to be the main issues in the appeal.
4. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
5. I have also dealt with another appeal¹ on this site. That appeal is the subject of a separate decision.

¹ APP/B5480/W/23/3331568

Main Issues

6. The main issues are therefore whether or not prior approval should be granted having regard to 1) the limitations of Class MA, 2) whether or not adequate natural light would be provided in all habitable rooms of the dwellinghouses, 3) the transport impacts of the development with regard to access, refuse storage and cycle storage, and 4) the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

Limitations of Class MA

7. A prior approval proposal under Class MA does not grant permission for operational development and this needs to be addressed separately. The appellant has submitted a separate application for planning permission to undertake works to the property and this is subject to a separate appeal.
8. The Council consider that the proposal would not constitute permitted development as works are shown that are out with the scope of constituting permitted development. The proposed development is however for the change of use from snooker hall (Class E(d)) to dwellinghouses and the appellant has clearly indicated the separate and distinct aspects of the application subject to the prior approval application and those which are subject to the separate planning application. Whilst they are separate applications, there is an evident link between the two.
9. The national Planning Practice Guidance² indicates that developers will need to consider whether physical works required to implement a change of use constitute development and ensure they have planning permission if necessary. Therefore, if operational development is required to support a change of use, the guidance effectively states that applicants should ensure that they have the correct planning permission for this. It does not, however, specify when any such planning permission should be secured. Moreover, whilst Paragraph W(2)(b) of Schedule 2, Part 3 of the Order requires a plan indicating the site and showing the proposed development, it does not state whether or not any required operational development should be shown.
10. It is also pertinent in this case that the need for operational development which would require planning permission is not listed as a disqualifying factor under Paragraph MA.1 of Class MA of the Order. Neither the Order nor the guidance specifies when planning permission should be secured for any operational development.
11. Therefore, having regard to the description of development before me, the proposed change of use would not be outside of the scope of development permitted under Class MA.

Natural light

12. Paragraph MA.2(2)(f) requires that before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required

² Paragraph: 055 Reference ID: 13-055-20140306

as to, amongst other things, the provision of adequate natural light in all habitable rooms of the dwellinghouses.

13. The term 'habitable rooms' is defined in Part 3, paragraph X and Part 20, paragraph C.(1) as meaning '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'.
14. The local planning authority refused to grant prior approval for the development as they considered that the development would not provide adequate natural light to all habitable rooms, namely two bedrooms.
15. Paragraph W(2A) of Part 3 of the Order states that where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.
16. The evidence shows that the bedrooms do not meet the BRE criteria. This is confirmed in the analysis entitled 'Adequate Daylight'. The order does not define what is considered as 'adequate' or adequate natural light'. The evidence before me, and the requirements of the Order, do not however in this case lead me to conclude that adequate natural light is provided in all habitable rooms of the proposed dwellinghouses, even if the BRE guidance suggests a degree of flexibility. The fact that the affected rooms are secondary bedrooms does not alter the fact that they are habitable rooms or resolve the conflict with the requirement for adequate natural light in all habitable rooms.
17. I acknowledge that in planning decisions, the BRE guide is advisory, and it is not an instrument of planning policy nor is it mandatory. It is, however, recognised as the principal guidance when considering daylight and is an appropriate method to use when considering the amount of daylight received by a proposed development. Principally, the aim of the guide is to ensure good conditions in the local environment.
18. The Framework outlines that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in the Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards). The Framework also outlines that developments should create places with a high standard of amenity for future users.
19. In this appeal, having regard to the requirements set out in the Order, the submitted evidence and the relevant content of the Framework, I find that the development would not provide adequate daylight to all habitable rooms. The flexibility in the Framework applies where it would otherwise inhibit making efficient use of the site, and there is no clear justification that the appeal scheme is the sole means to achieve this.

Transport Impacts

20. The appeal property is located within a relatively busy town centre location. I observed on my site visit that the town centre is served by several bus routes

and the appeal site is reasonably close to Emerson Park Station. The site therefore has good public transport accessibility.

21. No vehicle parking is currently available on site and none is proposed. Given the good accessibility to public transport and the previous commercial use, I do not consider that the lack of parking provision would lead to unacceptable transport impacts.
22. The Council do not raise an objection to the proposed development being 'car-free' however they have commented that there is no undertaking from the appellant in order to prevent future residents obtaining residents parking permits. I acknowledge that the Council consider a legal agreement would serve a better purpose in giving clarity to future occupants that they are not entitled to a residential parking permit, however this does not lead me to conclude that a planning condition could not be imposed to achieve the same means, and the submitted evidence shows that this approach has been used elsewhere.
23. The proposed ground floor plan shows that refuse and cycle storage would be located within the courtyard to the rear of the building. This is accessed via an alleyway from North Street. I observed on my site visit that there are also currently some refuse containers in this area serving the commercial properties and the existing residential units in the building. There is nothing to suggest that the current arrangement causes harm in terms of transportation impacts.
24. The Council have raised concerns in relation to some of the detailed elements of the refuse and cycle storage facilities. I am satisfied that the size of the courtyard when considered against the quantum of development and existing uses which operate from the building, the development would not have an unacceptable transport impact. It would have been reasonable to impose a planning condition requiring further details of these matters were the appeal to have been allowed, but there is no substantive evidence to show that there would be harm to transportation as a result of the development.
25. Based on the submitted evidence, and for the reasons given above, I therefore conclude that the proposed development would not result in unacceptable transport impacts. It would comply with the requirement of the Framework that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Noise Impacts

26. The appeal site is located in a relatively busy town centre location. To the rear of the site are two supermarkets and their car parks, and the rear of other commercial premises which are accessed via Leather Lane.
27. I observed on my weekday afternoon site visit that both the frontage and rear of the appeal site were relatively busy areas with noise primarily emanating from traffic and general comings and goings. I noted the location of the Fatling Public House and its outdoor area in relation to the appeal site. There was also some noise from extractor systems mounted to the rear of commercial premises. I appreciate that my site visit was a snapshot in time and that the noise environment may be different at different times.
28. There are several residential properties above commercial units in the area, including some which are closer to the Fatling Public House than the proposed

properties. Whilst residents in town centre locations such as this are entitled to acceptable living conditions, they can reasonably expect to experience a degree of noise which would be greater than some suburban locations, including during the evening and nighttime.

29. The appellant has submitted a noise report³ which concludes that future occupants would not be subject to unacceptable noise from commercial properties. The Council consider that the report, being undertaken during the week, does not present an accurate reflection of the noise environment which would be different at weekends, and refers to previous complaints being received due to noise from the public house.
30. I acknowledge that noise levels may fluctuate at different times, however given the town centre location, the separation that exists between the public house and the appeal site, when combined with the intervening residential properties and taking on board the findings of the report, I do not consider that residents would be exposed to unacceptable noise from commercial properties.
31. The Council raised concerns in relation to the impact on existing commercial uses by way of complaints from future residents having regard to the 'agent of change' principle. This is not however one of the criteria to be considered in an application for prior approval where the consideration of noise impacts is limited to the impacts of noise from commercial premises on the intended occupiers of the development and not the impact of intended occupiers on commercial premises.
32. The Council also raised concerns in relation to the impact of traffic noise. Whilst the specific noise from traffic directly associated with a commercial premises may be a relevant matter for consideration, noise from passing traffic on a roadway would not constitute noise from a commercial premises. This is therefore not a matter to consider in an application for prior approval.
33. I therefore conclude that the intended occupiers would not be subject to unacceptable impacts of noise from commercial premises.

Other Matters

34. The appellant has referred to the fact that the Council are unable to demonstrate a five-year supply of deliverable housing sites. The appellant suggests that the lack of a five-year housing land supply outweighs the shortfall in the ability to meet BR209(2022) guidelines.
35. As the application is not an application for planning permission, these matters are not, however, included in the matters for consideration as set out in the prior approval procedure. As prior approval means that a developer must seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed, the decision maker cannot consider any other matters, such as the provision of housing or the housing land supply, when determining a prior approval application.

Conclusion

36. Although I have found that the proposal would be capable of being considered under Class MA, would not have unacceptable transport impacts, and that

³ Environmental Noise Survey and Noise Impact Assessment Report - 23045/NIA

intended occupants would not be exposed to unacceptable noise from commercial premises, the development would not provide adequate natural light in all habitable rooms of the dwellinghouses.

37. Therefore, for the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR