



Appeal Decision

Site visit made on 5 June 2024

by Mr Owen Woodward MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal A - Ref: APP/J1535/W/23/3328699

177 High Street, Epping, CM16 4BL

- 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 G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mountcharm against the decision of Epping Forest District Council.
 - The application Ref is EPF/1251/23.
 - The development proposed is Prior Approval for the use of the upper floors of 177 High Street, Epping as two residential flats above the ground floor retail unit in accordance with Schedule 2 Part 3 Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015.
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Appeal B - Ref: APP/J1535/W/23/3328700

175 High Street, Epping, CM16 4BL

- 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 G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mountcharm against the decision of Epping Forest District Council.
 - The application Ref is EPF/1252/23.
 - The development proposed is Prior Approval for use of the upper floors of 175 High Street, Epping as two residential flats above the ground floor restaurant unit in accordance with Schedule 2 Part 3 Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015.
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Decisions

1. Appeal A is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2 Part 3 Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) for the use of the upper floors as two residential flats above the ground floor retail unit at 177 High Street, Epping, CM16 4BL in accordance with the application Ref EPF/1251/23 made on 24 May 2023 and the details submitted with it, and the conditions set out in the attached schedule.
2. Appeal B is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2 Part 3 Class G of the GPDO for the use of the upper floors as two residential flats above the ground floor restaurant unit at 175 High Street, Epping, CM16 4BL in accordance with the application Ref EPF/1252/23 made on 24 May 2023 and the details submitted with it, and the conditions set out in the attached schedule.

Preliminary Matters

Addresses

3. Appeal A relates to a ground floor retail unit and part of the office use that lies on the upper floors directly above that unit. The planning and appeal forms describe the site as No 177. I agree this is accurate. Appeal B relates to a ground floor restaurant unit and part of the office use that lies on the upper floors directly above that unit. This is described on the application and appeal forms as No 171. It is described on the decision notice as No 171-173. I do not believe either is accurate. The submitted Proposed Site Plan labels the units to either side of the two appeal sites as Nos 173 and 179. The appeal sites would therefore logically be Nos 175 and 177 respectively. I have therefore amended the appeal site address and description of development for Appeal B to be No 175. This is a housekeeping matter that does not affect the material considerations for either appeal or the ability to identify the appeal sites.

Scope of appeal

4. The proposals include internal works related to the proposed change of use. The drawings also indicate changes at ground floor to the rear to facilitate access, and a bin and bike store external to the building within the rear courtyard. The appeals relate to prior approvals for change of use. This does not, and cannot, relate to physical works. Therefore, for the avoidance of doubt, I confirm that the scope of the appeals relates to the proposed change of use and any relevant internal works only. However, the proposed bin and bike store is a material consideration to which I turn as appropriate throughout my Decision.
5. Article 3(1) of the GPDO directly grants planning permission for the classes of development described as permitted development (PD) in Schedule 2. The relevant part of the GPDO is Part 3 Class G(a) of Schedule 2. This grants PD for the change of use from Class E to Class E and up to two flats. The PD is subject to conditions set out at G.1. The appeals relate, in part, to whether or not the proposals are PD, as considered under those conditions. This is a relevant material consideration for both appeals because it is part and parcel of the assessment of the proposals the subject of the prior approvals.

Main Issues

6. The main issue is, therefore, whether or not the proposals accord with the requirements of Schedule 2, Part 3, Class G of the GPDO, with regard to Condition G.1(b).
7. If the proposals meet the requirements, then a further main issue will be whether or not they comply with the prior approval process for development permitted by Class G, with particular regard to Condition G.1(d)(v).

Reasons

Condition G.1(b)

8. The two appeals relate to part of a three-storey building located on High Street, Epping. The building has been sub-divided into a restaurant and a retail unit to the ground floor, which are independently accessed from High Street. It also has an office at 1st and 2nd floors. All these uses are within Class E as set

out in Schedule 2 of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2000. The office is independently accessed from a door on High Street via a staircore to the upper levels. Both ground floor units also have access from the rear, for servicing and staff. There is no access to the office use from the rear.

9. The proposal for Appeal A is to change the use of the upper two floors to create two residential flats (Class C3), to be independently accessed from a corridor and stairs to be constructed at ground floor level. The proposal for Appeal B is to change the use of the upper two floors to create two further residential flats. They would be independently accessed using the existing separate access from High Street. The proposal also involves extending this existing access corridor so that it reaches the rear of the commercial unit.
10. Condition G.1(b) states that where the proposed development consists of a change of use of any building with a display window at ground floor level, as is the case for both appeal sites, the ground floor must not be used in whole or in part as a flat. A 'flat' is defined in the GPDO as a separate and self-contained set of premises for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally.
11. As set out above and as shown on the submitted drawings, both appeals involve the carving out of space at ground floor level to create corridors. In Appeal A this is to provide independent access to the proposed flats. In Appeal B it would provide future residents with access to the rear servicing and refuse area. In both cases, the corridors would be solely associated with the proposed flats and not the ground floor uses. They would therefore be ancillary Class C3 accommodation. However, the corridors would not be part of a separate and self-contained set of premises and would not be part of the demise of any individual flat. They would be divided horizontally from the rest of the ground floor units, but that does not in itself bring them within the definition of a 'flat' as defined in the GPDO.
12. Therefore, the two corridors at ground floor level would not be part of the proposed flats, and the ground floor levels would not be used in whole or in part as a flat. The proposals for both appeals consequently comply with the requirement of Condition G.1(b) of Article 3, Schedule 2, Part 3, Class G of the GPDO.

Condition G.1(d)(v)

13. I therefore need to consider the prior approval process. The Council is content that there are no unacceptable effects in terms of contamination, flooding, noise impacts, or natural light provision. I agree with this assessment. The area of dispute is with regard to Condition G.1(d)(v) of the GPDO, which relates to the arrangements required for the storage and management of domestic waste.
14. The drawings show a refuse store sited to the rear of the subject building. The Council has not raised any substantive objection to the proposed refuse store and its objection is rather procedural. In this regard, the proposed refuse store would be located outside the red line for either appeal site. However, it is within the appellant's land ownership and I see no reason why it could not be provided. The facilities could therefore, in principle, be secured by a Grampian

condition. The detail of the waste collection procedures could also be secured by condition. I therefore have no concerns with regard to the procedural issues.

15. With regard to substantive issues, the refuse store would be located in a rear car parking and servicing area. In this context, it would not harm the character and appearance of the area. It would be located near to the rear accesses to the flats and to an existing rear servicing area. I therefore have no reason to believe that adequate access for residents and waste collection operatives could not be secured. The refuse store would be located on land currently providing two car parking spaces and would therefore lead to a loss of off-street car parking. However, the two spaces are within a relatively large car park. There is no evidence before me that there are any concerns regarding the loss of car parking. I particularly note that the Council is content in this regard.
16. I am therefore satisfied that the proposed refuse store would not unacceptably reduce car parking provision and thereby would not unacceptably increase on-street car parking pressure. The proposals for both appeals consequently comply with the requirement of Condition G.1(d)(v) of Article 3, Schedule 2, Part 3, Class G of the GPDO.

Other Matters

Heritage

Church

17. The Grade II* listed St John the Baptist Church¹ is located to the south-west of the appeal sites. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (The Act) sets out a statutory duty in relation to the granting of planning permissions which affect the setting of a listed building. Planning permission has been granted by Article 3(1) of the GPDO. However, the proposed refuse store would be located in the setting of the Church. I therefore need to consider the effect of the proposals on the significance of the Church with regard to its setting.
18. The Church was built on the turn of the 19th and 20th centuries. It replaced previous church(es) and the site has been a place for worship since at least 1397. The Church is a particularly attractive example of a building from the period it was built. Its significance largely derives from a combination of its intrinsic architectural quality and its use as a place of worship. It is relatively large and is prominent on a corner location in the town centre of Epping, which further adds to its significance, particularly as seen from High Street or St Johns Road. To the rear, the setting of the Church is unassuming, with the building being directly surrounded by surface level car parking and the rear entrances to the commercial buildings fronting both St Johns Road and High Street.
19. The proposed changes of use would have no material effect on the significance of the Church, which already sits in Epping town centre surrounded by a mixture of uses, including residential. The proposed refuse store would be located to the rear, in the area of surface car parking and existing rear entrances to several commercial units. It would be relatively small. It would therefore be appropriate for this area and would have no material effect on the significance of the Church. Overall, therefore, the proposals would not harm

¹ List entry number 1337450

the special architectural or historic interest of the Grade II* listed building, in terms of how it is experienced in its setting.

Conservation Area

20. The appeal sites are also within the Epping Town Centre and Epping Conservation Area (the CA). S72 of The Act sets out a statutory duty in relation to conservation areas. This applies to the appeals because the proposed refuse store would be located within the CA. I therefore need to consider the effect of the proposals on the significance of the CA.
21. In this regard, the CA covers most of the town centre of Epping. It includes a great variety of building styles and types. It is characterised by this pleasing variation, that has grown organically over time. Also important to the significance of the CA are relatively large areas of open space, particularly further to the north east of the area, which providing breathing space near to the dense development along High Street.
22. The proposed changes of use would have no material effect on the significance of the CA, which provides a variety of uses including residential. The proposed refuse store would be located in a rear service area near to existing rear entrances to commercial units. It would be relatively small. It would be appropriate in this location and would not harm the character or appearance of the CA.

Conditions

23. The Council suggested a number of conditions which I have considered and amended in the light of government guidance on the use of conditions for prior approval applications.
24. I have not applied the relevant conditions imposed by Condition G.1 of the GPDO because this would be unnecessary replication. I have not applied commencement conditions because permissions granted by the GPDO are continuous while the GPDO is in force. I have not applied drawings conditions because the prior approvals are granted subject to the submitted details and therefore this is not necessary. The ecology condition is not necessary for either appeal because it only replicates the requirements set out in Regulations 75 to 78 of The Conservation of Habitats and Species Regulations 2017, and therefore would need to be complied with in any event.
25. The land contamination condition is necessary for both appeals to ensure the proposal are acceptable with regard to these technical requirements which relate to the relevant element of the prior approval process.
26. A Grampian condition with regard to the proposed refuse store is necessary to ensure that adequate refuse facilities are provided for both proposals. The drawings submitted with the appeals also propose cycle parking adjacent to the proposed refuse store. However, this is not necessary because it is not a requirement of the GPDO. I do not, therefore, include reference to cycle parking within the relevant conditions.

Conclusions

27. For the reasons above, Appeal A is allowed.

28. For the reasons above, Appeal B is allowed.

Mr Owen Woodward
INSPECTOR

ANNEX A: CONDITIONS SCHEDULE FOR APPEAL A

1. The proposed use of this site has been identified as being particularly vulnerable if land contamination is present, despite no specific former potentially contaminating uses having been identified for this site. Should any discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works should be stopped and an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) shall be undertaken. If any contamination is found, then the site shall be remediated. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
2. Details of refuse and recycling storage to serve the development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the residential development. Details shall include the siting, form of the storage areas, collection points and the method of collection. The refuse storage facilities shall be provided in accordance with the approved details prior to occupation and shall thereafter be retained as such for the duration of the permitted use.

===== END OF SCHEDULE =====

ANNEX B: CONDITIONS SCHEDULE FOR APPEAL B

1. The proposed use of this site has been identified as being particularly vulnerable if land contamination is present, despite no specific former potentially contaminating uses having been identified for this site. Should any discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works should be stopped and an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) shall be undertaken. If any contamination is found, then the site shall be remediated. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
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