



Appeal Decision

Site visit made on 25 July 2024

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2024

Appeal Ref: APP/E5900/W/24/3339739

Oakwood House, Units 6a and 6b, 422 Hackney Road, London E2 7SY

- 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 GDPO).
 - The appeal is made by Mr Patrick Kennedy (Columbia House Properties No. 6 Ltd) against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref is PA/23/01298
 - The development proposed is the change of use of Units 6a and 6b from Use Class E (Office) to Use Class C3 (Residential) to form two dwellings.
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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) for the change of use of Units 6a and 6b from Use Class E (Office) to Use Class C3 (Residential) to form two dwellings at Oakwood House, Units 6a and 6b, 422 Hackney Road, London E2 7SY, in accordance with the terms of the application, Ref PA/23/01298, subject to the conditions in the attached schedule.

Costs

2. An application for an award of costs was made by Mr Patrick Kennedy against The Council of the London Borough of Tower Hamlets. This application will be the subject of a separate decision.

Preliminary Matters

3. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the change of use of a building and any land in its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellings). For development to be permitted it must satisfy the limitations set out at paragraph MA.1 and the conditions at MA.2.
4. The Council has not referenced any development plan policies within its reasons for refusal. However, for the avoidance of doubt, I have not decided this appeal on the basis of the duty in s38(6) of the Planning and Compulsory Purchase Act 2004. Paragraph W of Part 3 sets out the procedure for prior approvals and requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the Framework). I have considered the appeal on the same basis.

5. The appellant has submitted some additional evidence as part of their appeal statement. However, this is technical information that helps explain their case and it does not seek to amend or alter the proposed development in any way. All parties have had an opportunity to provide comments on this evidence and I am therefore satisfied that the interests of natural justice have been upheld.
6. I have slightly updated the wording of the description of development to ensure that it only describes what is being proposed.

Main Issues

7. The main issues are: (i) whether the transport impacts of the proposed development would be acceptable; (ii) the effect of the proposed development on the living conditions of future occupiers, with particular regard to noise; (iii) whether the host building meets the fire risk condition; and (iv) whether the proposed development conforms with the Nationally Described Space Standard.

Reasons

Transport (Paragraph MA.2(2a))

8. The Council's reason for refusal in this instance refers in part to the lack of a planning obligation to secure the proposed development as 'car free'. However, I note that the Council has addressed this issue previously through the use of a condition and I can see no reason why that would not be an appropriate course of action in this instance.
9. With regards to refuse collection and servicing, the building is already in use for residential and commercial purposes. There is no substantive evidence to suggest that the two proposed flats would result in a material difference to the number of service vehicles visiting the site. While I acknowledge that there is a bus stop and pedestrian crossing close to the entrance to Oakwood House, there are already restrictions which prevent vehicles from parking in this area. Nevertheless, to ensure that the development would not have any negative impacts in this regard, a condition can be imposed to require the submission and approval of a Deliveries and Servicing Plan.
10. I am therefore of the view that the proposed development would not result in harm in this regard.

Living Conditions (Paragraph MA.2(2d))

11. The proposed dwellings would have commercial office space both above and below. However, there are already residential flats within the building which would have a similar arrangement and I consider it unlikely that the noise emanating from an office space would be at a level that would be unacceptable for future occupants of the flats.
12. In any event, the appellant has submitted a Noise Impact Assessment (NIA) undertaken by Clarke Saunders Associates in February 2024. The NIA appears to be based on a robust methodology and it concludes that the existing construction of the building comfortably complies with the relevant building regulations.
13. Based on this, I am satisfied that the proposed development would not result in harm to the living conditions of future occupiers. Nevertheless, in the interests

of certainty, a suitably worded condition can be imposed to provide a sufficient level of sound insulation.

Fire Risk Condition (Paragraph MA.2(2i))

14. In order to trigger the fire risk condition, the building would need to be taller than 18 metres. The appellant has provided evidence to confirm that the building is significantly smaller at approximately 11 metres high. This issue has therefore been adequately addressed.

Nationally Described Space Standard (NDSS)

15. Within different parts of the planning application material, the appellant has described the smaller of the two proposed flats as a 'one bedroom, one person dwelling'. There is no reason for me to disagree with the appellant's description and there is no guidance that suggests that a flat that contains a separate bedroom should be considered as a one bedroom, two person dwelling.
16. The floorspace of this flat would comfortably exceed the requirement set out in the NDSS for a one bedroom, one person dwelling.

Other Matters

17. Comments have been received from third parties who have objected to the proposed development. It is clear that the intended works would have to comply with the requirements of building regulations to ensure that the flats are suitable for habitation. The Council is satisfied that the number of cycle parking spaces would be sufficient, and I have no reason to disagree. The approved plans show that the refuse area would be extended slightly to cater for additional rubbish and recycling. This would remove a very small area of planting, but I am satisfied that any impact on character and appearance would be negligible. There is also no substantive evidence before me to suggest that the extended refuse area would result in harm to personal safety or an increase in crime. However, in the interests of certainty, a condition can be imposed to require the submission and approval of further details in relation to refuse and recycling. Finally, any issues relating to the condition of the rest of the building fall outside the scope of this appeal.

Conditions

18. 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.
19. I have imposed a condition to identify the relevant plans in the interests of certainty. A condition to secure the development as 'car-free' is necessary to ensure that there would not be a harmful increase in on-street parking. A condition to secure cycle parking has also been imposed to encourage sustainable transport. In the interests of living conditions for existing residents a condition is necessary to require the submission and approval of a construction management plan.

20. A condition to require the submission and approval of a Noise Impact Assessment is not necessary as the NIA submitted by the appellant is already sufficient. The Council's suggested condition on noise insulation has been simplified in the interests of clarity, but I find that such a condition is necessary to ensure adequate living conditions for future occupiers. The need for a condition that requires a Deliveries and Servicing Plan has already been identified. However, I do not consider it reasonable to include restrictions on delivery times.

Conclusion

21. Having had regard to all matters raised, I conclude that the appeal should be allowed.

C Butcher

INSPECTOR

Schedule of Conditions

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.

- 1) The development shall be carried out in accordance with the following drawing numbers: 001 (Location Plan), 113, 118 and 119 (Proposed Floorplans).
- 2) The development hereby permitted shall not be occupied until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
 - (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.
- 3) The cycle storage shown on approved drawing number '119' shall be provided prior to the occupation of the development and thereafter shall be made permanently available for the lifetime of the development.
- 4) Prior to the first occupation of the approved residential units, a Deliveries & Servicing Plan shall be submitted to and approved in writing by the Local Planning Authority. The deliveries and servicing of the approved uses shall not take place otherwise than in accordance with the Deliveries and Servicing Plan thus approved.
- 5) The proposed residential units shall be designed and constructed with sound insulation that will ensure that the following internal noise levels are not exceeded due to external environmental noise: - Bedrooms (23.00-07.00 hrs): 30 dB LAeq, 8 hour and 45 dB Lmax (fast); Living Rooms (07.00-23.00 hrs): 35 dB LAeq, 16 hour; Dining rooms (07.00 - 23.00 hrs) 40 dB LAeq, 16 hour.
- 6) Prior to the commencement of development, including demolition, a construction management plan shall be submitted to and approved in writing by the local planning authority. The plan shall include the following information:
 - a) hours of construction;
 - b) hours of deliveries;
 - c) parking of vehicles associated with deliveries, site personnel, operatives, and visitors;

- d) facilities for the loading and unloading of plant and materials inside the site; and
- e) dust control methods.

The construction logistics plan shall be implemented as approved for the duration of the construction period.

- 7) No development shall take place until details of the provision of refuse and recycling storage facilities to serve the development hereby approved have been submitted to and approved in writing by the local planning authority. The storage facilities shall be implemented as approved prior to the first occupation of the development and retained thereafter.