



Appeal Decision

Site visit made on 23 July 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2024

Appeal Ref: APP/W2465/W/23/3324222

Eagle Star House, 11 Friar Lane, Leicester LE1 5RB

- 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 Oxford London Holdings Ltd against the decision of Leicester City Council.
- The application Ref is 20222229, dated 16 November 2022, was refused by notice dated 25 January 2023.
- The development proposed is conversion works consisting of retained Class E use at ground floor level and proposed forming of residential flats at first to fourth floor levels. Basement floor to be retained as storage for use by the retained Class E area and proposed flats.
- **This decision supersedes that issued on 21 March 2024. That decision on the appeal was quashed by order of the High Court.**

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 proposed conversion works consisting of retained Class E use at ground floor level and proposed forming of residential flats at first to fourth floor levels. Basement floor to be retained as storage for use by the retained Class E area and proposed flats at Eagle Star House, 11 Friar Lane, Leicester LE1 5RB in accordance with the application 20222229 and the details submitted with it.

Preliminary Matters

2. The appeal was made against the Council's 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) (hereafter, the Order).
3. This appeal is a redetermination following the quashing of the previous appeal decision¹ by the High Court². The previous appeal decision considered two main issues, relating to matters of natural light and noise. The decision was quashed on the basis that it *'was based on a mistake of fact leading to unfairness and that the mistake related to the sole ground of refusal, namely in the interpretation of a spatial daylight autonomy value calculation in an expert light assessment report'*³. No harm was found in relation to matters of noise within

¹ Decision date: 21 March 2024

² The sealed Consent Order dated 13 May 2024 (and dated by the parties 30 April 2024)

³ Paragraph 1 'Statement of Facts and Grounds' as included in the Consent Order, dated 30 April 2024 between Oxford London Holdings (Claimant) and Secretary of State for Levelling Up, Housing and Communities (the First Defendant) and Leicester City Council (the Second Defendant)

the appeal decision and matters of noise were not cited within the sealed Consent Order.

4. I have had regard to the previous appeal decision, in so far as it forms a material consideration, but have determined the appeal afresh on its planning merits within the framework imposed by Class MA of the Order, qualified by the provisions of paragraph MA.1, the conditions of paragraph MA.2., the interpretation offered by paragraph MA.3. and the procedures set out by Class W with regard to applications for prior approval.
5. With regard to the appellant's Noise Assessment Report⁴ (NAR), which the previous Inspector noted was available when this appeal was initially submitted, I too have taken it into account in considering this appeal. I am satisfied that in so doing no one would be prejudiced by having regard to this report.
6. When determining an application, the provisions of paragraph W.(10)(b) require regard to be had to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approved, as if the application were a planning application. There is no similar requirement for regard to be had to the provisions of the development plan, to which only the second of the Council's three reasons for refusal refer⁵.
7. The Council's original refusal reasons cited paragraphs 130⁶ and 174⁷ of the 2021 Framework. The Government has since published revised versions of the Framework, the latest of which was published in December 2023. A 'further draft text for consultation' on revisions to the Framework was published on 30 July 2024 with the consultation period closing on 24 September 2024. Other than changes to the paragraph numbers, the wording of paragraphs 135 and 180 of the 2023 Framework do not materially differ from that of paragraphs 130 and 174 of the 2021 Framework and I have determined the appeal accordingly and in so doing, I am satisfied that neither main party would be prejudiced. Unless otherwise stated, further references to the Framework herein are to the December 2023 version.

Background and Main Issues

8. The application was refused for three reasons, the third of which refers to the creation within flat 16 of an internal partition wall between the bedroom and the living / dining / kitchen area of that unit. By virtue of section 55(2)(a) of the Town and Country Planning Act 1990 (as amended (the Act), the 'carrying out for the maintenance, improvement or other alteration of any building of works which (i) only affect the interior of the building, or (ii) do not materially affect the external appearance of the building' shall not be taken for the purposes of the Act to involve development. That partition wall appears, from the submitted plans, to intersect with an existing fourth floor window and as such, the Council contend, would be an operation normally undertaken by a person carrying on business as a builder and that these works would also materially affect the external appearance of the building.

⁴ 'BS8233 Noise Assessment Report' – Aran Acoustics and Airtight Building Solutions Ltd (Doc Ref: RPT.221012.1-Eagle Star House Leicester – Noise Assessment, 12 October 2022)

⁵ Saved policy PS10 of the 'City of Leicester Local Plan (Incorporating the City of Leicester Minerals Local Plan) 1996-2016' (adopted January 2006)

⁶ Now paragraph 135 of the Framework (December 2023)

⁷ Now paragraph 180 of the Framework (December 2023)

9. Class MA of the Order permits development consisting of the change of use of a building and any land within its curtilage from a use falling within Class E⁸ of Schedule 2 to the Use Classes Order⁹ (UCO) to a use falling within Class C3¹⁰ of Schedule 1 to the UCO. Unlike some other classes within the UCO which deal with the principle of changes of use from certain uses to dwellinghouses¹¹, Class MA makes no provision within its grant of planning permission for the carrying out of operational development required to facilitate the change of use. However, the need for operational development which would require planning permission is not listed as a disqualifying factor under paragraph MA.1. of the Order.
10. Planning Practice Guidance advises that where associated physical development is required to implement the change of use, developers will need to consider whether it constitutes development and ensure they have planning permission if necessary. It is not stated at what stage in the process that permission, if necessary, should be sought.
11. Whether or not the insertion of an internal partition wall such that it intersects with an existing fourth floor window opening, or the installation of any ventilation of extract plant or equipment, amount to operational development is not a matter before me in the determination of the matters for which prior approval is sought. If necessary, these are matters that the appellant should pursue with the Council via, if required, an application for planning permission.
12. The main issues, framed within the terms set out in paragraph MA.2. of the Order, are therefore:
 - The provision of adequate natural light in all habitable rooms of the dwellinghouses; and
 - Impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

Natural light

13. The Council's concerns regarding the availability of natural light to habitable room windows are focused upon flats 13 and 18 of the proposed development. These flats, located on the third and fourth floors, respectively, of the appeal building, are exclusively served by easterly-facing windows which face out on to a lightwell formed by a small north-facing return of the appeal building and the opposing elevations of the appeal building and a neighbouring building.
14. Within this courtyard a metal fire escape staircase provides emergency access and egress from the roof and upper floors of the appeal building and is directly in front of two large windows of flat 13 and three smaller, higher level windows of flat 18. The fire escape staircase is comprised of a mix of solid treads, open-riser steps and solid metal 'landing' platforms.

⁸ Class E (commercial, business and service)

⁹ The Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020

¹⁰ Class C3 (dwellinghouses)

¹¹ Including, for example, Classes M and Q

15. For the purposes of development 'Classes' falling within Part 3 of the Order, paragraph X defines what constitutes a 'habitable room'. Thus, of the two windows of flat 13 where the fire escape stairs are directly outside, one would serve a dressing room area and the other a sole bedroom window. The layout of flat 18 differs to that of flat 13, but the partially glazed door and three windows that face directly out towards the fire escape stairs also serve that unit's bedroom area.
16. Whilst habitable rooms are defined for the purposes of the Order, adequate natural light and how to assess it is not. The appellant submitted a 'Proposed Accommodation Light Assessment'¹² (CPMC report) with the initial application to analyse natural daylight levels received by the proposed development. The development was, the CPMC report states, reviewed against recommended criteria set out in the 2022 BRE Guide¹³ 2022 and concluded that all rooms within the development 'comfortably fulfil' the daylight 'Spatial Daylight Autonomy' (SDA) guidance.
17. In the context of a dense urban environment such as that of central Leicester and, specifically, the area immediately around the appeal building, the report goes on to state that to comfortably fulfil the SDA guidance is to be regarded as a 'high level of compliance'. Crucially, the report's findings take into account the presence of the fire escape staircase directly outside certain windows serving flats 13 and 18 in reaching its conclusions. Because of their proposed end use as bedrooms, a lower lux target would be applicable to these rooms. The CPMC report concludes that these targets would be met, despite the presence of the fire escape staircase.
18. Whilst the escape staircase's presence would inevitably be visible from within flats 13 and 18, particularly given its proximity directly outside a number of the windows serving what would become the bedrooms to those flats, I have no reason to disagree with the CPMC report's findings and conclusions. The limited width of the steps, the open-risers of the steps and the position of the platform levels relative to the windows of flats 13 and 18 are all such as to mitigate the physical presence of the escape stairs.
19. For the reasons set out therefore, I am satisfied that it has been appropriately demonstrated that the proposed development would provide adequate natural light in all habitable rooms therein. This is consistent with the aims of paragraph 135 of the Framework in seeking to achieve well-designed places.

Noise

20. The appeal site is located in a central location in Leicester where there are nearby and neighbouring commercial night-time uses. Some of these, as noted by the appellant's submitted acoustic reports¹⁴ and by the previous Inspector, have late opening hours. Together, the acoustic reports set out the appellant's approach to the mitigation of externally generated noise transmitted externally (from road traffic and entertainment use sources) and internally (principally from entertainment uses as a source).

¹² 'Proposed Accommodation Light Assessment relating to the Proposed Development of Eagle Star House on behalf of Oxford London Holdings Ltd' by CPMC Chartered Surveying – November 2022 (Ref: Esh (Rev -))

¹³ 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice' (2022, 3rd Edition) by Building Research Establishment

¹⁴ 'Building Acoustic Test Internal Sound Insulation Desk Top Assessment' – Airtight Building Solutions Ltd (Report No: 108210622-01, 22/06/2022) and 'BS8233 Noise Assessment Report' – Aran Acoustics and Airtight Building Solutions Ltd (Doc Ref: RPT.221012.1-Eagle Star House Leicester – Noise Assessment, 12 October 2022)

21. The Council are concerned that the appellant has not provided sufficient information regarding the basis upon which the acoustic reports have been carried out and the mitigation identified. However, the reports are comprehensive and robust and adequately consider daytime and night-time noise levels, noise from entertainment sources, provide a comparison between the two sets of survey results and go on to consider façade noise break-in. Taken together, they conclude that subject to the mitigation measures outlined therein occupiers of the proposed flats would not be harmfully exposed to the impacts of noise.
22. Whilst ventilation of rooms on the southern and western facades of the building would not be suitable for opening windows or trickle ventilation as a consequence of break-in noise, the NAR suggests that alternative means of ventilation should be provided, and that this could be in the form of an MVHR¹⁵ system. No further details of an MVHR system, or indeed any other form of alternative ventilation systems, have been submitted, but the application documentation suggests that an MVHR system would utilise the existing naturally vented plant roof at roof level. The NAR indicates that an approach along these lines would provide sufficient attenuation from noise whilst providing adequate ventilation so as to ensure acceptable living conditions for future occupiers.
23. Whether or not the final details of an MVHR, or alternative scheme, would amount to operational development for which planning permission would be required, is not a matter before me under the prior approval process. However, for the reasons set out, I am satisfied that the appellant has adequately and appropriately demonstrated that the proposed development would not result in material harm to the living conditions of future occupiers arising from the impacts of noise from neighbouring and nearby commercial premises. The appeal scheme is therefore consistent with the aims and provisions of paragraphs 135 and 180 of the Framework in seeking to achieve well-designed places and preventing new and existing development from contributing to, or being put at unacceptable risk from, or being adversely affected by, amongst other things, noise pollution.

Conditions

24. The permission granted by Class MA is subject to the conditions set out at paragraph MA.2. It is not necessary to repeat them in full here, but of particular note are those set out at MA.2.(5) and MA.2.(6). These state, respectively, that development must be completed within a period of 3 years starting with the prior approval date (the date of this decision) and that any building permitted to be used as a dwellinghouse is to remain as a dwellinghouse within Class C3 of Schedule 1 of the UCO, and for no other purpose except to the extent that the other purpose is ancillary to use as a dwellinghouse.
25. In addition to the conditions imposed under Class MA.2. paragraph W.(13) of Part 3 allows for the imposition of conditions reasonably related to the subject matter of the prior approval. However, as the NAR and CPMC reports were part of the submissions that accompanied the initial application, paragraph W.(12)(a) of Part 3 of the Order requires that the development must be carried out in accordance with the approved details, comprised of the details as

¹⁵ MVHR = mechanical ventilation with heat recovery

submitted with the application. As such, it is not necessary for me to impose any further conditions.

Conclusion

26. For the reasons given above, the appeal is allowed and prior approval granted.

G Robbie

INSPECTOR