



Appeal Decision

Site visit made on 29 July 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2024

Appeal Ref: APP/Y1945/W/24/3339143

41 Market Street, Watford, Hertfordshire WD18 0PN

- 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 Mr Shakeel Adli against the decision of Watford Borough Council.
 - The application Ref is 23/01141/CTR.
 - The development proposed is the change of use from Class E offices/light industrial workshop to Class C3 dwellings (8 x units).
-

Decision

1. The appeal is allowed and 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 from Class E offices/light industrial workshop to Class C3 dwellings (8 x units) at 41 Market Street, Watford, Hertfordshire WD18 0PN in accordance with the terms of the application, Ref 23/01141/CTR, and the details submitted with it, including plans ref 1467_300, 1467_302, 1591_321 and 1591_320_B, and subject to the condition below:
 - 1) The proposed development shall not be occupied until the works shown on the drawings approved pursuant to planning permission 22/00921/FUL have been completed.

Application for Costs

2. An application for an award of costs was made by Mr Shakeel Adli against Watford Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal documents include a revised plan showing an updated accommodation schedule and built-in storage, as well as an updated Daylight & Sunlight Analysis (DSA) and a Note. The planning appeals procedural guidance¹, confirms that, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
4. The parties have had the opportunity to comment on this information through the appeal process. The Council has not commented on the updated DSA and

¹ Procedural Guide: Planning appeals – England.

Note, and it considers that the revised plan should not be accepted. However, in this case, the changes are minor and were submitted in response to the Council's reasons for refusal. As such, I am satisfied that no prejudice would occur as a result of my consideration of their content. For the avoidance of doubt, my decision on this appeal is based on the revised plan and updated DSA and Note.

5. A Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 has been provided (UU) as part of this appeal. The Council is satisfied that the UU would ensure that the development would be car-free. Consideration is given to this document later in my decision.

Background and Main Issues

6. 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 GPDO), planning permission is granted for the change of use from commercial, business and service (use class E) to dwellinghouses (use class C3) subject to certain limitations and conditions.
7. Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2). One of these conditions is MA.2(2)(f), which relates to the provision of adequate natural light in all habitable rooms of the dwellinghouses.
8. Further, Regulation 3, paragraph 9A of the GPDO sets out that Schedule 2 does not grant permission for, or authorise any of, any new dwellinghouse that does not comply with the nationally described space standard issued by the Department for Communities and Local Government.
9. The prior approval was refused on the basis that the proposal would not meet the requirements of condition MA.2(2)(f) and of Regulation 3, paragraph 9A. There is no dispute that the other criteria of Class MA are satisfied.
10. The Council has not referenced any development plan policies within its reasons for refusal. For the avoidance of doubt, I have not decided this appeal on the basis of 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 decision-maker to have regard to any representations made as a result of the neighbour consultation and to the National Planning Policy Framework (the Framework) so far as relevant to the subject of the prior approval. I have proceeded accordingly.
11. Therefore, the main issues are whether the proposal would provide acceptable living conditions for future occupants, with regard to:
 - compliance with the Nationally Described Space Standards (NDSS) in terms of internal floor space and built-in storage; and
 - the provision of natural light in all habitable rooms.

Reasons

Nationally Described Space Standards

12. The revised plan clarifies that Flat 7 would be a 1-bedroom/ 1-person dwelling. Therefore, in accordance with the NDSS, the minimum gross internal floor area for this type of unit is 37m². There is no dispute between the parties that this flat would have a gross internal floor area of approximately 53m², with some 47m² of floor space at first floor level. As such, flat 7 would accord with the NDSS.
13. The NDSS requires built-in storage to be provided within the dwellings. The revised plan depicts such storage in all flats. As such, the proposal would accord with the NDSS in this regard.
14. Consequently, I find that the proposed development would provide adequate internal floorspace and storage, in accordance with Regulation 3, paragraph 9A of the GPDO.

Natural light

15. The term 'habitable rooms' is defined in Part 3, paragraph X of the GPDO 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'.
16. The GPDO does not specify any particular standard that must be met for demonstrating the adequacy of light. The DSA, which considers the recent development at No 33 Market Street, includes an assessment of the proposal in terms of daylight illuminance and annual probable sunlight hours. The DSA uses methodologies contained within the Building Research Establishment's Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice – BR209 2022 (the BRE Guide) and the British Standard BS EN 17037 - 2018 Daylight in buildings.
17. Although the above guidance is often referred to when considering daylight and sunlight, the advice is not mandatory and should be interpreted flexibly. Despite that the position of each window is not clearly identified within the DSA, I find that there is sufficient evidence to allow a clear understanding of the light levels associated with each room and flat.
18. The DSA assessed the proposal using the Daylight Illuminance Method, which relies on the target illuminance levels within the UK National Annex for bedrooms, living rooms and kitchens. Where one room serves more than a single purpose, the UK committee recommends using the target illuminance for the room type with the highest value. As such, in a space that combines a living room and kitchen, or in a studio flat, the recommended target illuminance is 200 lux, whereas for bedrooms this is 100 lux. The UK committee recommends that these target illuminance values are exceeded over at least 50% of the points on a reference plane 0.85m above the floor, for at least half of the daylight hours.
19. The DSA found that all bedrooms would achieve a minimum of 100 lux and all living/kitchen spaces would achieve a minimum of 200 lux on more than 50% of the points on a reference plane 0.85m above the floor, for at least half of the daylight hours. Regarding the studio flats, the DSA concludes that these would

achieve a minimum of 200 lux on more than 50% of the points on a reference plane 0.85m above the floor, for at least half of the daylight hours, which is higher than the target of 150 lux suggested by the Council.

20. The Note confirms that the walls shown in flats 4 and 5 adjacent to the beds have been included within the assessment. However, flats 1, 2 and 6 just have furniture shown adjacent to the bed, which is not required to be modelled within daylight assessments. Although no diagrams have been provided, the Results Table within the DSA confirms the scheme's compliance with the recommendations. I am therefore satisfied that the flats would receive adequate daylight.
21. In respect of sunlight hours, the BRE Guide recommends that a dwelling will appear reasonably sunlit if at least one main window wall faces within 90° of due south and a habitable room, preferably a main living room, can receive a total of at least 1.5 hours of sunlight on 21 March.
22. Flats 3, 4, 5 and 7 would be entirely reliant on light from rooflights, which in the case of flats 4 and 5 would be north-east facing. The DSA explains that it is generally accepted in the industry that rooflights cannot be judged by the same orientation rules as windows, as they benefit from direct sunlight even if the orientation of the roof does not face within 90° of due south. This is because rooflights receive more direct sunlight than walls as they are closer to the horizontal plane.
23. The DSA demonstrates that all openings serving the flats 3, 4, 5 and 7 would receive a minimum of 2.5 hours of direct sunlight on 21 March, thereby achieving a level of sunlight above the recommended minimum of 1.5 hours. As such, notwithstanding that these flats would be served by rooflights only, and the orientation of those openings on Flats 4 and 5, I find that the sunlight levels received by these flats would be adequate.
24. The DSA is based upon a number of external alterations to the building, which include windows and roof lights. These works are the subject of a separate application² which was recently approved by the Council and remains extant. A condition requiring that the appeal scheme is not occupied until those openings have been inserted would ensure that adequate natural light would be provided. There is nothing in paragraph W (13) of the Order, or in the PPG, to prevent the imposition of a negatively worded condition, relating to occupation.
25. Therefore, the proposal would provide adequate natural light to all habitable rooms of the dwellinghouses. As such the proposal would satisfy condition MA.2(2)(f) of the GPDO.

Other Matters

26. I note the comments received from an interested party. However, the issues they raise are not matters which fall to be considered as part of this appeal.
27. The site is within a Controlled Parking Zone whereby parking spaces are controlled by resident parking permits. The prior approval scheme would result in the creation of eight new residential units, thereby placing an additional strain on the existing on-street parking spaces in an area that already

² LPA ref 22/0921/FUL, granted on 13 September 2022.

experiences parking problems. Without being addressed, this would result in an unacceptable highway impact.

28. With that in mind, the appellant has completed a UU, which would secure a financial payment towards the variation of the Borough of Watford (Controlled Parking Zones) (Consolidated) Order 2023 so that future residents of the development will not be entitled to a residents' parking permit in the vicinity of the site.
29. Overall, I find that the agreement would be necessary, relevant and fairly related to the proposed development. As such, the proposal would accord with condition MA.2.(2)(a) of Class MA.

Conditions

30. Prior approval under Class MA is subject to the conditions set out at paragraph MA.2. Paragraph W(13) of Part 3 allows for the imposition of conditions reasonably related to the subject matter of the prior approval. These relate to the timeframe for completing the development, and that any building permitted to be used as a dwellinghouse is to remain as a dwellinghouse within Class C3 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended), and for no other purpose except to the extent that the other purpose is ancillary to use as a dwellinghouse. As such, separate conditions are not required in this regard.
31. I have included a condition to ensure that the scheme would not be occupied prior to the completion of the development permitted under application reference 22/0921/FUL. This is to ensure that adequate natural light would be provided to all habitable rooms.
32. As I have found the proposal acceptable in terms of gross internal floor area including built in storage to comply with Nationally Described Space Standards, I have not included the Council's suggested condition requiring amended plans to demonstrate this.

Conclusion

33. For the reasons set out above, the proposed development is permitted development under Schedule 2, Part 3, Class MA of the Order and the appeal is therefore allowed.

P Terceiro

INSPECTOR