
Appeal Decision

Site visit made on 5 November 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/Y1945/W/24/3344540

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 24/00143/CTR.
 - The development proposed is a change of use from Class E offices/light industrial workshop to Class C3 dwellings (8 x units).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for 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 site has had a considerable recent history for prior approval and related applications, which both parties make reference to. One application, LPA Ref. 23/01141/CTR, was the subject of an appeal that was determined very recently, on 24 October 2024¹.
4. The appellant has stated that this proposal was the same as the proposal in the appeal currently before me. Live appeals on the same site are normally linked so as to be determined by a single Inspector, in the interests of consistency and efficiency. However, that has not happened in this case.
5. There are some differences between the plans submitted for the current appeal and those listed on the Decision Letter for the other appeal, and the evidence that was before that Inspector is not before me. I have had regard to the decision of the other Inspector, but I have determined this appeal on the basis of the evidence before me and my observations on site.
6. The name of the appellant on the appeal form does not match the name of the applicant on the application form. Under s78 of the Town and Country Planning Act 1990 (as amended), only the applicant has the right of appeal. This matter was raised with the appellant at the time the appeal was validated and I am satisfied with the appellant's explanation there was a mistake made in

¹ Ref. APP/Y1945/W/24/3339143

completing the appeal form. From the evidence, I am content the appellant is the applicant.

Background and Main Issues

7. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) concerns development consisting of a 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 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) to a use falling within Class C3 (dwellinghouses) of Schedule 1 of the UCO.
8. Planning permission for the proposed development has already been granted by the Government through the GPDO, subject to a number of limitations and conditions. However, the Council has indicated that prior approval of the conditions listed under paragraph MA.2.(2) of this part of the GPDO is required.
9. Paragraph MA.2.(2)(a) of the GPDO concerns *the transport impacts of the development, particularly to ensure safe site access*; whilst paragraph MA.2.(2)(f) concerns *provision of adequate natural light in all habitable rooms of the dwellinghouses*.
10. Therefore, the main issues are the effect of the proposal on:
 - Transport; and,
 - The living conditions of future occupiers, with specific regard to natural light.

Reasons

11. A prior approval should not be determined, expressly or otherwise, on the basis of s38 (6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied; the principle of development is established through the grant of permission by the GPDO. I have not, therefore, had determinative regard to the development plan policies referenced by the Council.
12. I have had regard to the National Planning Policy Framework (December 2023) (the Framework) insofar as it is relevant to the subject matter of the appeal, as if the application were a planning application.

Transport

13. The appeal site is located in a Controlled Parking Zone (CPZ). The Council considers that a planning obligation would be required to ensure that future occupiers of the proposed development would not be entitled to a permit to park vehicles within the CPZ. The Council considers that without such an obligation, existing on-street parking problems would be exacerbated.
14. Planning Practice Guidance (PPG) on Planning Obligations states that *by its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be*

necessary. Any planning obligations entered into should be limited only to matters requiring prior approval...².

15. The appellant does not consider such an obligation is necessary but has submitted a Unilateral Undertaking given the position of the Council as Local Highway Authority. When I visited the area, I noted that there was a very significant level of on-street parking in the vicinity of the appeal site and some associated congestion.
16. Whilst my observations were for a limited time period, I am content from the evidence that increased on-street parking in the area would be very likely to have a severe impact on the local highway network, to the detriment of public safety in this busy area. I am, therefore, satisfied that such an obligation would be *necessary to make the development acceptable in planning terms; would be directly related to the development; and, would be fairly and reasonably related in scale and kind to the development*³.
17. However, I note the contradiction between the stated owner of the appeal site on the obligation, a company Zunikh Market Street Limited (Co. Regn. No. 14143277) of 71-75 Shelton Street, London WC2H 9JQ, and the stated owner of the site on the appeal form, Mr Shakeel Adli. It appears that either the name of the owner on the obligation is incorrect, or a false declaration was made on the appeal form. This is very unhelpful to say the least.
18. Setting that matter aside, the submitted obligation is undated. Consequently, and irrespective of the Council's position, the obligation is flawed and so ineffective, and it carries no weight in my determination. I also note that no evidence of title has been provided and so I am not satisfied that the owner listed on the obligation is the owner of the appeal site, said to be Title Number HD177491.
19. For these reasons, the proposed development would adversely affect Transport in the area. Consequently, it would conflict with the Framework, in this regard.

Living conditions

20. The adequacy of natural light to habitable rooms is a matter of planning judgement based upon the submitted evidence. The appellant has provided a Daylight and Sunlight Analysis report⁴ which sets out the quantity and quality of natural light, including sunlight, the proposed development would receive. This report is said to have been produced in accordance with the BRE standards for natural light and sunlight. These standards are not before me and there is no requirement within the GPDO for the BRE standards to be used.
21. The Daylight and Sunlight Analysis report states that all the BRE standards would be met or exceeded by the windows / rooflights / habitable rooms within the proposed development. This would include with regard to the Vertical Sky Component, the Daylight Illuminance criteria and the Probable Sunlight Hours criteria. The report concludes that habitable rooms in the proposed development would receive adequate levels of natural light. No

² Paragraph: 009 Reference ID: 23b-009-20190315 Revision date: 15 03 2019

³ Para 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

⁴ Ref: Z54917.1C (13 February 2024)

compelling evidence has been provided to cause me to doubt the findings of the report.

22. I note the concerns raised by the Council regarding the cleaning of the rooflights in particular. I am satisfied that such matters could be controlled by means of a suitably worded condition were the proposal otherwise acceptable, including with reference to inwardly opening rooflights, as suggested by the appellant.
23. I also note that the Daylight and Sunlight Analysis report is predicated upon the implementation of works approved under a separate planning permission⁵. On this basis, a suitably worded condition requiring these works to be fully implemented prior to occupation of any of the dwellings would be needed, were the proposal otherwise acceptable.
24. For these reasons, the proposed development would be acceptable with regard to the living conditions of future occupiers, with specific regard to natural light. It would, therefore, accord with the Framework, in this regard.

Other Matters

25. The Council makes reference to two appeal decisions in its officer report⁶ in different parts of the country; the appellant makes reference to and has provided copies of the Decision Letters for three appeal decisions⁷ in different parts of the country, in addition to the recently determined appeal at the appeal site⁸. Whilst some plans have been provided by the appellant, I am not fully familiar with any of these schemes and in any event, each proposal should be determined on its individual merits, which is what I have done in this case.

Planning Balance and Conclusion

26. The proposal would be acceptable in terms of natural light to habitable rooms. However, the Transport harm that would be caused would outweigh this.
27. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

⁵ LPA Ref. 22/00921/FUL

⁶ Ref. APP/X0360/W/21/3283156 and Ref. APP/Z3825/W/20/3264603

⁷ Ref. APP/Q5300/W/21/3267658; Ref. APP/X0360/W/21/3283156; and, Ref. APP/Z3825/W/20/3264603

⁸ Ref. APP/Y1945/W/24/3339143