



Appeal Decision

Site visit made on 5 November 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/T5720/W/24/3345759

4 South Park Road, Wimbledon, Merton, London SW19 8ST

- 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 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr D Ivanov of DNI Properties Limited against the decision of the Council of the London Borough of Merton.
 - The application Ref is 24/P0700.
 - The development proposed is a prior approval for the proposed erection of a single additional storey over the existing three storey building, providing 2 x 2 bed flats.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made by Mr D Ivanov of DNI Properties Limited against the Council of the London Borough of Merton, this is the subject of a separate decision.

Preliminary Matters

3. The description of development on the application form refers to an accompanying statement. In the banner heading above, I have used the description of development stated on both the notice of decision and the appeal form, as it most accurately describes the proposed development.
4. The Planning Practice Guidance states that permitted development rights are a national grant of planning permission, which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity. This is effectively a 2-stage process, it is necessary in the first instance to determine whether or not the proposal is permitted development.
5. The appeal is made pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built block of flats, as well as certain associated works.
6. Paragraph A.1. of Class A, Part 20, Schedule 2 of the GPDO sets out limitations to this permitted development, and Paragraph A.2. requires that

before beginning the development, the developer must apply to the Council for prior approval in relation to certain matters. The Council considered that the proposal does not meet the requirements of paragraph A.1 (o) (vii) as it is said to be within 3 kilometres of the perimeter of an aerodrome and as such would not benefit from the permitted development right in this case. Notwithstanding this, the Council has also identified conflict in terms of paragraph A.2 (a) relating to transport and highways impacts of the development, in particular car free housing. Based on the evidence before me, I am also satisfied that the proposal would meet the other limitations set out within paragraph A.1 and if it were permitted development, that it would not result in adverse impacts in respect of the other prior approval matters set out in paragraph A.2. I have therefore confined my reasoning to these areas of dispute.

7. Where an application is made for a determination as to whether prior approval is required for development, paragraph B(3) provides that the local planning authority may refuse the application where it considers the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.
8. In response to reason for refusal no.2, the appellant has provided a Unilateral Undertaking dated 8 March 2024 (UU) that would provide obligations to ensure that the proposed development is car free. The Council has stated that the UU addresses reason for refusal no.2, consequently I have determined the appeal on this basis. I shall return to the UU later in my decision.

Main Issues

9. The main issues are:
 - whether the proposal would be permitted development in accordance with Class A, Part 20, Schedule 2, of the GPDO, and if so;
 - whether the UU is reasonable and necessary to make the development acceptable in regard to the transport impacts of the proposal.

Reasons

Is the building within 3 km of the perimeter of an aerodrome?

10. Paragraph A.1(o)(vii) sets out that development is not permitted if the land or site on which the building is located, is or forms part of land within 3 km of the perimeter of an aerodrome.
11. The proposal is within 3 km of the helipad for St George's Hospital, Blackshaw Road, which is not disputed by the main parties. The Council has said the helipad is used by the hospital for the arrival and departure of air ambulance helicopters, I have no reason to disagree.
12. The Council has provided with its statement, an appeal decision¹ relating to the interpretation of an aerodrome in respect of a helipad (the previous appeal decision), which the appellant has also had the opportunity to comment on

¹ Appeal Ref: APP/E5900/W/21/3279527

within their final comments. I have had regard to this decision in my reasoning below.

13. Article 2 of the GPDO sets out that in this Order, "aerodrome" means an aerodrome as defined in [paragraph 1 of Schedule 1 to the Air Navigation Order 2016 (ANO)] which is—
 - (a) licensed under that Order,
 - (b) a Government aerodrome,
 - (c) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft,
 - (d) one used by aircraft engaged in the public transport of passengers or cargo or in aerial work, or
 - (e) one identified to the Civil Aviation Authority before 1st March 1986 for inclusion in the UK Aerodrome Index,and, for the purposes of this definition, the terms "aerial work", "Government aerodrome" and "public transport" have the meanings given in paragraph 1 of Schedule 1 to that Order.
14. "Aerodrome" in paragraph 1 of schedule 1 to the ANO is defined as:
 - (a) means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft; and
 - (b) includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically; but
 - (c) does not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed.
15. On the previous appeal the Inspector concluded that transporting patients to the hospital for emergency care did constitute transporting passengers. It is accepted that such passengers would not be fee paying, and that the helipad would not be used as a means of general public air travel, but nevertheless the transport of patients would also in my view constitute transporting passengers consistent with the definition in Article 2 above (criteria (d)).
16. Furthermore, against the legislative framework set out above and based on the information before me, it is clear to me that the helipad at St George's Hospital would be capable of meeting the definition of an aerodrome in the ANO (criteria (b)).
17. Article 6(2) of the ANO states an aircraft in flight is flying on a public transport flight if-...:
 - (a) the flight is not a flight for the purpose of commercial air transport; and
 - (b) the flight is-

(i) for the carriage of passengers or cargo and valuable consideration is given or promised for that flight in the aircraft; or

(ii) operated by the holder of a national air operator's certificate or a Part-CAT air operator certificate and any passengers or cargo are carried gratuitously in the aircraft except for persons specified in paragraph (3) or cargo specified in paragraph (4).

18. It was found on the earlier appeal decision that the London Air Ambulance Limited is the holder of a national air operator certificate, and would meet the ANO, Article 6, (2)(b)(ii). Given the nature of likely helicopter travel, it is also more than likely that the London Air Ambulance would use the helipad at St Georges Hospital, and it is also reasonable to assume that the helicopter would carry passengers gratuitously.
19. The ANO defines passenger as a person other than a member of the crew, however, there is no definition of a passenger within the GPDO. I have therefore used as an ordinary meaning of a passenger, which dictionary definitions include a traveller on a public or private conveyance other than the driver, pilot, or crew. Notwithstanding that the helipad is not used for commercial travel, the definition of a passenger to me indicates that a patient travelling aboard an air ambulance, even if travelling involuntary would be a passenger. As such, the helipad at St George's Hospital would for the reasons outlined above, constitute an aerodrome.
20. The appellant has argued that the helipad use is not the main planning use, suggesting it is a hospital, with the helipad as an ancillary use, and a small part of the overall movements associated with the hospital. Whether that be so, it is the function of the helipad as an aerodrome that is caught by the GPDO, not the primary use of the planning unit.
21. Moreover, it is imperative to note that the permitted development rights within Class A of Part 20 Schedule 2 of the GPDO do not apply for development within the 3 km perimeter of an aerodrome, to protect the air space close to aerodromes, and to ensure aircraft are not put in danger by the height increases of a development. While the intricacies and interpretation of law are important, of upmost importance is the preservation of life - which is exactly what this helipad and air ambulance service seeks to do.
22. Consequently, the building would be within 3 km of the perimeter of an aerodrome, which is used by aircraft engaged in the public transport of passengers. Thus, the proposed development would not be granted planning permission by Article 3 (1) and Schedule 2, Part 20, Class A A.1 (o) (vii) of the GPDO.
23. As considerations in relation to highway and transportation matters are a follow-on stage in relation to prior approval matters, they can therefore only apply if the proposal is otherwise permitted development. As the proposal would fail to constitute permitted development under Class A, it would not be necessary or appropriate to proceed to consider whether the UU is reasonable and necessary regarding the prior approval matter of highway and transportation impacts.

Other Matters

24. It is noted that the appellant has said No. 8 South Park Road has undertaken a similar proposal through a prior approval application. This, however, does not alter my findings above in regard to this appeal proposal, nor is it a relevant consideration when assessing the appeal proposal against the relevant limitations of the GPDO.
25. The appellant has also made comments in support of the appeal proposal, however as this is an application for prior approval, for which permitted development rights do not apply, it has not been necessary for me to consider these matters further.

Conclusion

26. For the reasons given above, the appeal should be dismissed.

A Hunter

INSPECTOR