



Appeal Decision

Site visit made on 23 October 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/N4720/W/24/3345137

Cliff Tannery, 388 Meanwood Road, Meanwood, Leeds LS7 2JF

- 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) (GPDO).
 - The appeal is made by Mr H Manton (HM Properties Ltd) against the decision of Leeds City Council.
 - The application ref is 23/06520/DPD.
 - The development proposed is change of use to form 9no. apartments.
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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 GPDO for prior notification for the change of use to form 9no. apartments at Cliff Tannery, 388 Meanwood Road, Meanwood, Leeds LS7 2JF in accordance with the terms of the application, Ref 23/06520/DPD and the details submitted with it subject to the conditions set out on the attached schedule and the obligations in the Unilateral Undertaking.

Applications for costs

2. An application for costs was made by Mr H Manton (HM Properties Ltd) against Leeds City Council. This application is the subject of a separate decision.

Preliminary Matter

3. A Planning Obligation by way of a Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with this appeal. This relates to preventing the occupation of the residential units until such time as the access, parking, and amenity area (including residential cycle store and residential bin store) has been completed and made available for the use of the residential development. I will return to this matter later.

Background and Main Issues

4. Under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, planning permission is granted for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses) subject to limitations and conditions.

5. The prior approval matters for Class MA includes amongst other matters, the transport impacts of the development, particularly to ensure safe site access.
6. In that context and having regard to the reason for refusal as set out in the Council's decision notice, the main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 3, Class MA of the GPDO with regard to transport impacts.

Reasons

7. The site fronts Meanwood Road and is a former office building with an existing access point located to its western side. The proposed development seeks to change the use of the building from offices to form nine dwellings. The original submission included a red line site boundary which encompassed land to the rear and west of the building to serve as access, parking, and amenity areas for the proposed development. This included an existing warehouse building and its curtilage, so effectively straddled two curtilages, hence it was deemed that its inclusion would fall outside of the scope of Class MA. The red line boundary was therefore revised to consist solely of the building itself. The proposed development would not therefore include the access point, parking and amenity areas which would indeed be required to serve the development.
8. It is on this basis that the Council consider that the scheme fails to deliver a means of vehicular access or onsite car parking provision to serve the development. It went on to list a series of harms arising from this which in turn relate to the transport impacts of the development. The key question is therefore whether the proposal delivers a suitable means of access/parking provision to serve the development.
9. Behind the site is an industrial premises, which is understood to also be under the control of the appellant. Its redevelopment into smaller industrial units was recently granted planning approval under reference 22/05656/FU. This is therefore an extant planning permission. The red line boundary for that application covered the land to the rear and west of the appeal building with areas for a future residential site, including car parking, an amenity area, and cycle and bin storage.
10. Although the description of development did not specifically make reference to residential uses, what can be done with the land may not be exhaustively written into the description of development. It may also not have been the Council's intentions to approve these aspects of that development. Nonetheless, the approved plan clearly identified them, along with access from Meanwood Road to the west of the existing building. Even if such areas were marked as indicative and not finalised, the area to be devoted to parking is clear and condition 9 of that consent also requires its layout to be approved along with other hard and soft landscape works. On this basis, despite the previous proposal being for a commercial scheme, it still includes an access that could serve this prior approval development with access to the bin and cycle stores, parking spaces and amenity space on the adjacent site.
11. It is undisputed that the scale of the proposed provision of access and car parking is considered to be fair and reasonable in that the level of provision and the space for vehicles to turn is adequate. The means of access, albeit shared with a potential commercial/industrial development is also acceptable. The Council's Highways team have also raised no objections to the proposal

subject to a number of suggested planning conditions. I appreciate that this was without the knowledge of the various red line boundaries for each scheme and the technicalities of such. Nevertheless, this would not alter their overall lack of objection provided that the details pursuant to the extant permission adjacent can come forward.

12. To this end, the appellant's UU relates to preventing the occupation of the proposed residential units until such time as the access, parking and amenity area has been completed and made available for the use of the residential development. This has been signed and I am satisfied that this is a completed version. On this basis, the proposed development can deliver a suitable means of access/parking for the site. While these are in separate planning units, considered under different criteria, they are both under the control of the appellant. Furthermore, the demolition of the commercial building to the rear to facilitate provision of the parking and manoeuvring space to serve the proposal would need to happen in a timely manner prior to the occupation of the residential units, particularly given the expiry dates of both approvals.
13. The Council refers to the case of *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council*, *Energiekontor (Uk) Limited Judgment* which sets out that the operative part of a planning permission equates to the description of development. I do not dispute this nor do I dispute that the approved plans can only serve to limit the operative part of the permission, they can't add to it. What is however clear in the scheme I am considering is that there is an extant planning permission on adjacent land which includes areas for access, parking, and amenity to serve the residential use of this scheme. All of which has been incorporated into condition 2 of that permission relating to the approved plans. This has particular significance and cannot be taken away by the description of development particularly given that the description does indeed include reference to associated works including alterations to access, new parking, and landscaping. There would not therefore be an extension to the approved plans or change to the description of development and thus it would not conflict with the *Finney Judgment*. The development merely shows how these areas could be controlled for delivery by way of a planning obligation which I find to be reasonable and appropriate in this case. I am not sufficiently persuaded that the previously approved development would preclude the use of the site for residential purposes.
14. As the areas to the rear and west of the building form part of the previous planning permission clearly devoting areas to a residential use, I find that the scheme can deliver a means of vehicular access and onsite car parking provision to serve the development and would not therefore result in harmful transport impacts. Such areas can be controlled via the submitted UU which would secure the provision of the car park and access. Discussions have taken place with the appellant during the course of the application whereby the Council provided advice on how to proceed in terms of a resubmission that encompasses the entire demise. Whilst this is likely to have been a more straight forward option, it would not alter my findings that a suitable access/parking can be provided to serve the development and I am not persuaded that because the appellant altered the red line boundary, they accepted that the scheme was not capable of lawful approval by the Council.
15. Overall, I am satisfied that the planning obligations included in the UU provides the necessary mitigation to prevent the refusal of prior approval in the

particular circumstances of this case. On this basis, prior approval can be given for the proposed development under Part 3 Class MA of the Town and Country Planning GPDO.

Other matters

16. The Council set out that the noise report submitted has been considered and the recommendations within it are considered adequate to protect the amenity of future occupiers. It goes on to explain that full consideration has not however been given at this stage as to the likely impact of the adjacent Waste Recycling site on the use of any outdoor amenity space to be provided for future occupiers as a result of potential noise and smells from that site due to the lack of validity of the application type.
17. Matters relating to odour do not appear to relate to matters to be addressed through the prior approval process. In terms of noise and notwithstanding that such matters did not form part of the Council's reasons for refusal, a noise report has been submitted for the scheme as set out which is considered adequate to protect the amenity of future occupiers. Based on the evidence before me, I have no compelling reason to raise concern regarding the likely impact of the adjacent Waste Recycling site on the use of any outdoor amenity space to be provided for future occupiers particularly given the nature of the application type and that this was not raised as an issue in the Council's Environmental Health Services response. The outdoor amenity areas also fall within the adjacent land, and I have no evidence that this was an area of concern in determining the previous application.

Conditions

18. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO is subject to the standard conditions set out in paragraph MA.2. For Class MA cases, Paragraph W applies which allows decision makers to "*grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval*".
19. I have considered the conditions suggested by the Council and amended these where necessary for clarity. Conditions relating to contamination and remediation are necessary to ensure that the presence of contamination is identified, risks assessed and proposed remediation works are agreed and fully implemented in order to make the site suitable for its intended use.
20. Suggested condition 4 relating to noise is necessary to ensure satisfactory living conditions for future occupiers of the units. This has however been amended to be specific to the scheme of Sound Attenuation proposed by the ENS Noise Impact Assessment dated 29th September 2023 which was submitted as part of the application/appeal. I have also related this to each apartment as some units may be ready to occupy and others not. Measures preventing the intrusion of smells, odours, dust, and grit do not relate to the prior approval matters and are not therefore relevant.
21. Suggested condition 5 relates to car parking for the disabled. However, the details of such parking were secured through the discharge of condition 9 of the extant planning permission which will be required alongside the delivery of the residential car park. The UU also crosses over with suggested condition 5 because it prevents the occupation of the development until the car park has

been completed and made available for use. I do not therefore find this condition to be necessary and thus has not been applied. Similarly, suggested conditions 6, 7, 8 and 9 covering matters relating to redundant accesses, cycle parking and facilities, lying out, surfacing and drainage are all matters which are covered by conditions 9, 26, 27 and 28 of the extant permission and are governed by the UU. I do not therefore find such conditions to be necessary and they have not been applied.

22. A time limit for the completion of the development within a period of 3 years is covered under the standard conditions set out in paragraph MA.2. (5). Suggested condition 10 is not therefore necessary and has not been applied. Suggested condition 11 restricting the use as a dwellinghouse and for no other purpose is not reasonable and there is no justification for this. It has not therefore been applied.
23. I am aware of a suggested condition from Leeds Swifts regarding swift bricks, but this is not considered reasonably related to the subject matter of the prior approval and cannot therefore be applied.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

N Teasdale

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Development (excluding demolition) shall not commence until a Phase I Desk Study has been submitted to, and approved in writing by, the Local Planning Authority and:

(a) Where the approved Phase I Desk Study indicates that intrusive investigation is necessary, development (excluding demolition) shall not commence until a Phase II Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority;

(b) Where remediation measures are shown to be necessary in the Phase I/Phase II Reports and/or where soil or soil forming material is being imported to site, development (excluding demolition) shall not commence until a Remediation Strategy demonstrating how the site will be made suitable for the intended use has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a programme for all works and for the provision of Verification Reports.

It is strongly recommended that all reports are prepared and approved by a suitably qualified and competent person.

- 2) If remediation is unable to proceed in accordance with the approved Remediation Strategy, or where significant unexpected contamination is encountered, or where soil or soil forming material is being imported to site, the Local Planning Authority shall be notified in writing immediately and operations on the affected part of the site shall cease. The affected part of the site shall be agreed with the Local Planning Authority in writing. An amended or new Remediation Strategy and/or Soil Importation Strategy shall be submitted to and approved in writing by the Local Planning Authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Strategy. Prior to the site being brought into use, where significant unexpected contamination is not encountered, the Local Planning Authority shall be notified in writing of such.

It is strongly recommended that all reports are prepared and approved by a suitably qualified and competent person.

- 3) Remediation works shall be carried out in accordance with the approved Remediation Strategy in Condition 1 of this schedule. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.

It is strongly recommended that all reports are prepared and approved by a suitably qualified and competent person.

- 4) Prior to the occupation of any of the apartments within the building, the Scheme of Sound Attenuation set out in Chapter 4 of the ENS Noise Impact Assessment dated 29th September 2023 shall be completed as far as it relates to each apartment. The completed works shall be retained for the lifetime of the development thereafter.

End of schedule