



Appeal Decision

Site visit made on 18 November 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/T5150/W/24/3344864

Wotton Works, 16 Wotton Road, London, NW2 6PX

- 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 G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Clifton Securities Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref is 24/0556.
 - The development proposed is Use of the First Floor as a Flat.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) was revised on 12 December 2024. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Background and Main Issues

3. The Council refused the application on the basis that the proposal would not constitute permitted development. However, it still considered the proposal against the conditions set out in G.1. of Schedule 2, Part 3, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) and found that it would not satisfy paragraph (d)(i) contamination risks, (d)(ii) flooding risks and (d)(iii) impacts of noise from commercial properties.
4. Accordingly, the main issues are:
 - whether the proposal would be permitted development under Class G, and if so;
 - the contamination and flooding risks in relation to the building; and
 - impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

5. Schedule 2, Part 3, Class G (Class G) of the GPDO permits change of use of a building from a use within Class E (commercial, business and service) or betting office or pay day loan shop to a mixed use for any purpose within that Class and as up to 2 flats.
6. The appeal relates to a two-storey building which comprises two units. Planning permission¹ was granted in November 2018 for office space (Use Class B1) at ground and part of first floor level and one self-contained flat (Use Class C3) on the first floor (the approved scheme). This planning consent has been implemented. A subsequent planning permission² was refused and allowed at appeal³ for the change of use of the ground floor office of Unit 2 to live/ work. This has also been implemented.
7. Therefore, the existing situation is that Unit 1 contains office use (Use Class E(g)(i)) on the ground and first floor. Unit 2 consists of live/work (Sui Generis Use) on the ground floor and a self-contained flat (Use Class C3) on the first floor.
8. Case law⁴ establishes that consideration must be given to the functional relationship and physical separation of uses on the land. In this regard, Unit 1 is accessed directly from the communal courtyard. The first floor of this unit can also be accessed by two other entrances shared with the existing first floor flat, one in the communal courtyard and the other on the south elevation of the building. Both entrances lead to an internal staircase and hallway which provide access to both the existing first floor flat and the first floor office. The primary access to the existing workspace of the live/ work unit is from the communal courtyard, as it is for the ground floor office. Access to the building itself is via a narrow lane used by the different occupiers of the building. The covered internal courtyard contains shared facilities such as a cycle store.
9. The different uses within the building, therefore, have a close physical and functional relationship. For both this reason, and because of the use classes as established by the implemented planning permissions, the existing building is not wholly within Use Class E and contains a mix of uses comprising live/work (Sui Generis Use), office (Use Class E(g)(i)) and residential (Use Class C3). As a consequence, the proposal does not benefit from permitted development under Class G because the building, as whole, is not within Use Class E.
10. The Council has questioned the lawfulness of the existing use of the first floor of Unit 1 due to the presence of a cooker, fridge and shower that do not appear commensurate with the approved use as an office. If it were unlawful, then Class G of the GPDO would not apply, as set out at Article 3(5)(b) of the GPDO. However, the lawfulness of the existing use of the first floor is not determinative because of my conclusion that, even if this were considered to be an office, the whole building is still not within Use Class E.
11. Furthermore, Condition 5 of the approved scheme explicitly precludes a change of use to a flat by removing any rights that may exist through the GPDO. Article 3 (4) of the GPDO confirms that such conditions can prevent

¹ 18/2523.

² 21/4064.

³ APP/T5150/W/22/3293766.

⁴ *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207.

permitted development. The condition is clear and precise with regard to the removal of permitted development rights, in accordance with the requirements set out through case law⁵. The condition exists, therefore whether or not it is reasonable or necessary is not relevant to the issues before me. I am therefore satisfied that the condition precludes permitted development rights, were they to exist under Class G.

12. For the reasons given, the proposal would not comply with G.(a) as the building is not wholly within Use Class E. Furthermore, the proposal would fail to comply with Article 3 (4) of the GPDO which restricts permitted development contrary any condition imposed by a planning permission. As such, the proposal would not constitute permitted development with respect to Class G.
13. As considerations in relation to prior approval under paragraph G.1 are a follow-on condition stage, they can therefore only apply if the development is otherwise permitted development. As the proposal would fail to constitute permitted development, there is no need to consider whether prior approval is required.

Conclusion

14. For the reasons given above, the appeal is dismissed.

U P Han

INSPECTOR

⁵ Dunnett [Dunnett Investments v SSCLG [2017] EWCA Civ 192], Trump [Trump v The Scottish Ministers [2016] 1 WLR 85], Dunoon Developments [Dunoon Developments v SSE & Poole Borough Council [1993] P&CR 101]