Planning Inspectorate

Appeal Decision

Site visit made on 20 January 2025

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal Ref: APP/H5390/W/24/3354466
Waterford House, 1-7 Waterford Road, LONDON SW6 2DL

- 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 1, Class A, Paragraph A.4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by ReAssure Limited against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref 2024/01657/PMA56.
- The development proposed is: Change of use from a commercial, business and service use (Class E) into 34 no. self-contained residential flats (Class C3), comprising of 20 x 1 bedroom 2 person units and 14 x2-bedroom 4 person units.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made under the provisions of permitted development under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). Development under Class MA is permitted subject to an assessment of impacts relating to transport, the provision of natural light, waste management and fire risk, amongst other considerations.

Access to car park

3. The site has excellent public transport links and the local development plan requires the proposed residential use to be car free. The existing rear car park, shared between the current office use and the adjacent and residential Lord Roberts Mews, is not within the appeal site according to the site plans submitted. However, the appellant has indicated that they own part of the rear car park next to the building and that that strip of land, which runs along the building's rear elevation and covers about half of the available parking bays, would be required for servicing purposes. Moreover, the plans state that the undercroft would be open to traffic to gain access to the Lord Roberts Mews car park.

4. Notwithstanding that the undercroft access is not contiguous with the appellant's land in the car park, and that the managers of the Lord Roberts Mews parking area have indicated that access would not be allowed across their land, this situation could change. The appeal statement notes that vehicular access through the undercroft would be prevented by the installation of bollards, but there are no

bollards shown on the drawings. It is also stated that there would be inconsequential vehicular access and/or servicing access, and also that the appellant could enter into assurances with the Council that there would not be vehicular access through the undercroft. However, there are no such assurances before me for consideration.

5. However, despite the inconsistencies before me, the overall thrust of the appellant's evidence appears to be that the current vehicular access through the undercroft would cease. I have proceeded on this basis.

Evidence

6. The Council noted in its appeal statement that it had not received the parking stress survey or the Fire Statement. I queried this with the appellant during the appeal but there is nothing before me to indicate that the situation was rectified. To take these documents into account in my reasoning could be prejudicial to the Council and as such, I am unable to give those documents any weight. It is the responsibility of the appellant to ensure that all relevant documents are sent to the relevant parties.

Main Issues

7. The main issues are the effects of the proposed change of use on:

- Transport impacts, with particular regard to parking stress, cycle parking and waste management;
- Fire safety;
- The living conditions of future occupiers with particular regard to light; and,
- Whether the proposals amount to permitted development under Class MA of the Order.

Reasons

Transport impacts

Parking Stress

8. I noticed at my visit that there were parking spaces available on the road, but this was a snapshot in time, and the building is currently used as an office and has off-street parking. The proposed residential use would be likely to put different pressures on local parking stress in relation to both time and volume. The appellant submitted a parking survey, but it has not been received by the Council and as such I am unable to take it into account. In any case, the building is currently used for office purposes, and parking expectations from residential occupation would not be the same.

9. Policy T4 of the Local Plan (LP) requires all new development to have car parking permit free measures imposed unless evidence is provided to show that there is a significant lack of public transport available. There appears to be nothing in the local development plan to indicate that if on-site parking is available, this cannot be used by future occupiers. I acknowledge that parking areas are an inefficient use of land but in this case, it seems highly unlikely that the rear car park would be used

for any other purpose. Nonetheless, given the number of units proposed it is also unlikely that there would be sufficient space at the rear to meet parking demand. As such, the change of use could add to on-street parking stress which would be an adverse transport impact, contrary to the requirements of LP Policy T4. The mitigation measures set out in a planning obligation are discussed below.

10. The London Plan requires development delivering ten or more units to provide one disabled parking bay from the outset. There would be thirty-four units here yet the transport statement states that given the low number of dwellings proposed, it is not intended to provide a disabled bay from the outset. It is proposed that a condition is imposed that requires a Parking Design and Management Plan to set out how future disabled residents would request a parking bay. Nonetheless, there would be conflict with Policy T6.1 of the London Plan in this regard.

Cycle storage

11. The plans show a combination of Sheffield cycle stands and cycle racks located within the undercroft and to its immediate rear. Given the space available, even if there was to be some traffic through the undercroft, I see no reason why sufficient space for storage units and circulation could not be accommodated, even if this required some amendments to the layout. There is nothing before me to indicate that specific buffer zones are required between vehicular access routes and cycle storage, and even if the vehicular access continued through the undercroft, it seems likely that traffic would be infrequent.

12. Most of the cycle stands and racks would be directly beneath the building. This seems to me to provide adequate protection from the weather. The plans show that sixteen cycle stands would be located outwith the undercroft at the rear. The plans in that part of the building do not accord with my observations, but I am satisfied that the layout could be amended and/or shelters provided for any stands outside the undercroft. As such, I see no reason to conclude that adequate, safe and secure cycle storage, could not be provided.

13. However, Class MA of the Order permits a change of use and land within the curtilage but not the operations required to facilitate the change of use. The proposed cycle racks would be outside the building and installation would be engineering works, requiring a separate permission. The proposals would not therefore qualify as permitted development under Class MA of the Order.

Waste Management

14. The Council's concern in this regard appears to relate to the potential conflict between vehicular access through the undercroft and operational access to the waste bins. There are currently locked gates separating the undercroft from the highway. There is nothing before me to indicate that there are currently conflicts between access for waste removal and the passage of cars through the undercroft. I am unable to conclude that access to the bin area would be so unsafe as to weigh against approval of the appeal.

15. However, with regard to transport impacts overall, there would be an adverse impact on on-street parking and the provision of a blue-badge space. The development would fail to meet the requirements of Class MA of the Order in this regard.

Fire Safety

16. With regards to fire safety, Policy D12 (B) of the London Plan states that all major development should be submitted with a Fire Statement. This was provided when the appeal was lodged but was not sent to the Council. The Council has indicated that a satisfactory statement would remove that reason for refusal. On the face of it, the Fire Statement submitted appears to meet all the requirements. Nonetheless, as the document has not been shared with the Council I am unable to conclude that it would address the Council's concerns, or that the change of use would meet the fire safety standards set out in London Plan Policy D12. The development would also fail to meet the requirements of Class MA of the Order in this regard.

17. The appellant has highlighted a recent appeal which concluded that a building met the fire risk condition set out in national legislation. It is unclear whether this was a major development and whether the situations are comparable. In any case, it remains that the Council has not had an opportunity to review the Fire Statement.

Living conditions

18. Table C1 of Site Layout Planning for Daylight and Sunlight[1] gives target illuminances for side lit rooms. The target illuminances should be met across at least half of the reference plane for at least half of the daylight hours. The UK National Annex to BS EN 17037 gives minimum illuminance recommendations of 150 lux in living rooms and 200 lux in kitchens. These are the thresholds which need to be exceeded over at least 50 percent of the assessment points for at last half of the daylight hours. Where a room has shared use, the highest target should apply.

19. The appellant's daylight report[2], has been updated to take account of obscure glazing in some ground floor rooms. The key to the Daylight Illuminance plan[3], shows that in some rooms, particularly on the ground and first floors, the proposed kitchen areas would not receive 200 lux for at least half the daylight hours. However, these areas are less than 50 per cent of the room's floor area. As such, I conclude that overall, those rooms would meet the target illuminances. The rooms would have adequate natural light. I appreciate that the rear of the rooms would receive less light than the front, but there is nothing before me to suggest that lower light levels in the kitchen would have an adverse effect on the living conditions of future occupiers. As such the development would accord with LP Policy HO11, and the requirements of Class MA of the Order.

Compliance with requirements for Class MA

20. Cycle racks, stands and bollards would constitute external works. Section 55 (2) of the Town and Country Planning Act 1990 (as amended) in relation to building operations clarifies what is meant by development of land. Works that affect only the interior of a building, or do not materially affect the external appearance of the building are exempt from the definition of building operations.

[1] A Guide to Good Practice, BRE 2022
[2] James Bowman, October 2024
[3] Dwg. No. P3678/CBDM/01

21. Whilst I appreciate that the cycle stands, racks and bollards could be underneath the building, the ground beneath is not the interior of the building. Moreover, although the appellant advances the argument that the building's external appearance would not be materially affected, this presumes that Section 55(2) encompasses the external context of a building, rather than works attached to its exterior. In my view, the reference to external appearance in this context is works to the fabric of the building, not works that are nearby and that might be seen in a building's context. As such, the application would not qualify as permitted development under Class MA of the Order.

Planning obligation

22. The site has good access to public transport and on-street parking in the area appears to be highly restricted. More dwellings could lead to greater on -street parking stress.

23. There is a draft Unilateral Undertaking (UU) before me which seeks to restrict access to parking permits through restrictive covenants, and to mitigate the effects of the development arising from increased private car ownership. However, access to parking permits cannot be directly controlled through planning legislation, as eligibility is controlled by local Traffic Orders. There is nothing in the UU that sets out a mechanism for ensuring that the Council amends its Traffic Orders, or for providing a contribution in that regard.

24. As such, I am unable to conclude that the development would meet the requirement for car free housing as set out in LP Policy T4, which promotes car free development. In any case, as I have concluded that the development would not meet the requirements for prior approval there is no need for me to consider this further.

Other Matters

Conservation area

25. The appeal site sits within a conservation area. However, although I am satisfied that external works would not be allowed as permitted development, they would have very little impact on the character and appearance of the conservation area.

Existing tenant

26. The existing tenant has raised that as the lease can only be broken by the tenant, even if the proposals were permitted under this appeal, it could not be implemented within the given three years. However, that is not before me and carries no weight as situations may change.

27. The managers of the Lord Roberts Mews have raised concerns in relation to the continued use of the appellant's parking area, as the pattern of use would be very different from the current situation. This could lead to noise and disturbance for those existing residents. This was not given as a reason for refusal by the Council, and as I have found harm in relation to other issues, there is no need for me to consider this further.

28. It has also been suggested by nearby residents that the people using Waterford House use the Lord Roberts Mews exit to leave the car park as this is easier to

negotiate than the Waterford House undercroft. This is not a planning matter and does not weigh in the evidence.

Conclusion

29. The application fails to meet the requirements for prior approval with regard to transport impacts and fire safety. External works would also be required. The appeal is dismissed.

A Edgington

INSPECTOR