



Appeal Decision

Site visits made on 18 March and 8 April 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2025

Appeal Ref: APP/D1590/W/24/3351390

9 Elmer Approach, Southend-on-Sea SS1 1NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions imposed on a grant of prior approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Crown Lodge Accommodation Ltd against the decision of Southend-on-Sea City Council.
 - The application Ref is 24/00228/AMDT.
 - The application sought planning permission for change of use of existing offices (Class B1) to 119 self contained flats (Class C3) without complying with a condition attached to prior approval Ref 18/01873/PA3COU dated 4 December 2018.
 - The condition in dispute is No 1 which states that: *The development hereby permitted shall be completed no later than three years from the date of this decision.*
 - The reason given for the condition is: *Required to be imposed pursuant to O 2(2) of Class O, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended).*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have considered the appeal in parallel with a separate appeal ref APP/D1590/W/3357343, which relates to refusal of an application for prior approval pursuant to Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). That appeal relates to a proposal for conversion of the same building to 102 self-contained flats. I undertook an initial site visit for both appeals on 18 March 2025, however arrangements which had been made for internal access to the building on that day fell through at short notice. I therefore returned on 8 April 2025, to complete the site inspection.

Background and Main Issues

3. The appeal site contains a 10-storey building, comprising mainly retail units on the ground and first floors, with offices above. Prior approval was granted by the Council in December 2018 for change of use of existing offices to 119 flats, pursuant to Schedule 2, Part 3, Class O of the GPDO.
4. Condition 1 attached to the prior approval decision required the development to be completed within three years of prior approval having been granted. That is a standard condition imposed by the GPDO in paragraph O.2(2) of Schedule 2, Part

3, Class O. According to the appellant, operational works for conversion of the building commenced within that period and that is not contested. However, the development had not been completed by the required date in December 2021, and it remains incomplete. The application is for variation of condition 1 to extend the required period for completion of the development for a further three years.

5. The Council considered the application under s73 of the Town and Country Planning Act 1990 (TCPA 1990), as stated in the reason for refusal and the banner heading above. However, since the requirement to complete the development by the deadline in condition 1 was not met, the condition has been breached. As such, s73A of the TCPA 1990 is relevant and I have considered the appeal on that basis. Since the fact that condition 1 has been breached lies at the heart of the application and is clearly acknowledged by both parties, I am satisfied that no unfairness would arise as a result of my having done so.
6. The main issue is the effect that varying the condition would have on delivery of the approved development, having regard to the development plan and other material considerations.

Reasons

7. As set out in legal submissions from both parties, an application can be made under s73 of the TCPA 1990 for the variation of a condition imposed on the grant of a prior approval under the GPDO. That principle has been established in case law referred to by both parties¹ and, while I have considered the appeal under s73A, as set out above, that does not prevent the application being considered.
8. Amendments have been made to Class O, which had the consequence of rendering it ineffective after 31 July 2021, since any new applications for prior approval under that Class had to be made by that date. However, when prior approval was granted by the Council in December 2018, the planning permission granted by the GPDO was crystallised. It has not elapsed or expired and an application to vary condition 1 can still be considered, even though a new application for prior approval under Class O could not, at this point, be made.
9. S73(2) of the TCPA 1990 requires that consideration is given only to the question of the conditions subject to which planning permission should be granted. Nevertheless, as is confirmed in Planning Practice Guidance², the application is to be considered having regard to the development plan and other material considerations, as required by s38(6) of the Planning and Compulsory Purchase Act 2004. There is no mechanism for granting a new 'prior approval' under the GPDO, even if Class O was still extant. As such, while the focus of this appeal is on the effect of varying condition 1, the implications of extending the period for completion of the development should be considered with reference to the current development plan and other material considerations.
10. At the time of the application for prior approval, Class O required consideration of prior approval matters limited to the transport and highways impacts of the development, contamination risks on the site, flooding risks on the site and the impacts of noise from commercial premises on the intended occupiers. It can

¹ Pressland v Hammersmith & Fulham LBC [2016] EWHC 1763 (Admin)

² Planning Practice Guidance paragraph 019 Reference ID: 17a-019-20140306 (Annex A: summary comparison table).

reasonably be presumed that the Council considered the proposed development to be acceptable in terms of those issues when they granted prior approval.

11. However, that decision was made several years ago, in 2018, raising the possibility that circumstances may have changed. Furthermore, the Officer Report contains an extensive list of relevant development plan policies and supplementary planning documents. While full details of those policies are not before me, it is clear from the document titles and policy headings that they encompass a much wider range of issues than those within the scope of Class O at the time that prior approval was granted.
12. For example, the development plan policies listed include reference to residential space standards, dwelling mix and design quality, which are clearly relevant to a proposal for a conversion of the existing building to flats. The Officer Report also reveals that the site is within the Elmer Square Policy Area, which is covered by development principles set out in Policy PA3 of the Southend Central Area Action Plan 2018. While that would also have been the case when prior approval was granted, the Class O prior approval matters were narrowly defined, and the evidence does not establish that they would have adequately addressed any requirements in a policy designation of that nature.
13. The Officer Report also refers to an SPD adopted in 2020, after prior approval was granted, which concerns the avoidance and mitigation of recreational disturbance on Habitats Sites³. While I recognise this was not raised in the reason for refusal on this appeal, it appears that a Habitats Regulations Assessment would be necessary before any fresh planning permission could be granted under s73A.
14. While the scope of this appeal is limited to the question of the conditions subject to which planning permission should be granted, the direct effect of varying condition 1 would be to allow the development to proceed. That development was concluded to be acceptable based only on the narrow range of issues set out in Class O. While the appellant asserts that the proposal is fully compliant in respect of national, regional and local planning policy, that has not been clearly articulated or demonstrated in the evidence, having regard to the scope of the relevant development plan policies. While the Officer Report did not spell out any explicit conflict, the Council did conclude that it had not been shown that the development was acceptable when evaluated against the relevant development plan policies, national and other relevant planning guidance and material considerations.
15. In those circumstances, were I to allow the appeal, there is a clear risk that development conflicting with the development plan would result. That would undermine the effectiveness of the plan-led approach. Moreover, given the significant scale and highly prominent position of the building, within the city centre and the Elmer Square Policy Area, based on the evidence before me, it appears entirely possible that substantial harm would arise from any such conflict.
16. The site is within a central location, where there is easy access to public transport and a wide range of services and facilities. In terms of the Framework, the proposal appears generally consistent with policies directing development towards sustainable locations, boosting housing delivery and making effective use of previously developed land. However, the evidence does not demonstrate that it would align with policies in the Framework for securing well-designed places and

³ Essex Coast Recreation disturbance Avoidance and Mitigation Strategy SPD 2020

providing affordable homes. Nor can it be clearly determined whether it would accord with policies to ensure the vitality of town centres, notwithstanding the recognition that residential development can play an important role in that regard.

17. The Council has acknowledged that there is a shortfall in housing land supply, so the sizable number of additional homes would be of significant benefit. However, that is tempered by the uncertainty about whether the quality and design of the housing would accord with relevant policies, including those relating to space standards and housing mix. Furthermore, since a further three-year period is sought for completion, it could still be some time before the flats were delivered and there is no clear confirmation that the detrimental visual appearance of the currently incomplete development would be rapidly resolved.
18. Given the housing land supply position, paragraph 11d of the Framework is relevant. However, based on the evidence before me, the tests set out in that paragraph cannot be properly applied. Having regard to the potential effect on Habitats Sites, paragraph 11di may indicate that planning permission should be refused. Even if the evidence had clearly demonstrated that there was no strong reason to do so, paragraph 11dii would require a judgement to be made as to the weight attached to the adverse impacts and benefits of the development when assessed against the Framework as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes.
19. Applying that test would include judging the weight to be attached to any conflict with policies in the development plan, according to their degree of consistency with the Framework⁴. For the reasons given above, the evidence before me does not permit that judgement to be made with any degree of confidence. In those circumstances, the policies in the Framework, including those regarding housing land supply and the provisions of paragraph 11d, are not a material consideration of sufficient weight to justify granting planning permission.
20. As a consequence of my separate decision on appeal ref APP/D1590/W/3357343, I recognise that no fallback position is available by means of the permitted development rights granted in Schedule 2, Part 3, Class MA of the GPDO. Consequently, if condition 1 is not varied, for the time being there is no approved route by which conversion of the building can proceed. Until that is resolved, the likelihood is that the building will remain in its current condition and the potential for beneficial use of the site will not be realised.
21. However, the option remains open for the appellant or another relevant party to seek planning permission by means of an alternative application, supported by evidence to demonstrate that conversion of the building is acceptable having regard to the development plan and other relevant considerations. If so, that would be a matter for the Council to determine based on the evidence presented and, in those circumstances, the benefits of the development could be properly weighed in the balance, applying paragraph 11d if required.

Conclusion

22. In conclusion, while varying the condition would enable delivery of the approved development, based on the evidence before me I conclude that would be a harmful

⁴ Framework paragraph 232

outcome, having regard to the development plan and other material considerations.

23. It has not been demonstrated that the proposed development would accord with the development plan or that any conflict with the development plan is outweighed by other material considerations. In those circumstances, the appeal should be dismissed.

Jane Smith

INSPECTOR