
Appeal Decision

Site visit made on 29 September 2014

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 May 2015

Appeal Ref: APP/X5210/A/14/2221432
79 Fortress Road, NW5 1AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class O of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Live/Work Space LLP against the decision of the Council of the London Borough of Camden.
 - The application Ref 2014/2154/P, dated 21 March 2014, was refused by notice dated 28 May 2014.
 - The development proposed is "application for confirmation that prior approval is not required for change of use from B1 (a) offices to C3 dwellings".
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the application for confirmation that prior approval is not required for change of use from B1 (a) offices to C3 dwellings at 79 Fortress Road, NW5 1AG, in accordance with the details submitted pursuant to Schedule 2, Part 3 Class O of the GPDO.

Procedural Matters

2. Date of application for prior approval was dated 21 March 2014, and was received by Council on 24 March 2014, while the Council's decision with regard to the application for prior approval was published on 28 May 2014. Even taking the later date, I am aware that the 56 day period for the determination by the Council as to the need for prior approval had expired prior to the Council issuing its Decision Notice. Nonetheless, an appeal has been submitted and I shall therefore deal with the appeal before me.
3. The appeal was made under the provisions of Class J of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO), which after 15 April 2015 has been contained within the provisions of Class O. These require the local planning authority to assess the proposed development solely on the basis of its impact on highway safety, contaminated land and flood risk, taking into account any representations received. For the purposes of clarity where Class J is referred to in this Decision it should be taken to mean Class O.
4. The Council has confirmed that prior approval of contamination and flood risks are not necessary. Reasons 2, 3, 4 and 5 of the Decision Notice relate to highway safety impacts, but reason 1 relates to the living conditions of existing

residents of adjacent properties on Fortess Road, and the Council has referred to paragraph 17 of the National Planning Policy Framework and Article 8 of the Human Rights Act.

Main Issues

5. The main issues in the appeal are therefore:
- Effect of the development on the living conditions of existing residents of adjacent properties on Fortess Road; and
 - The impact of the development on highway safety.

Reasons

Living conditions

6. No 79 Fortess Road is a four storey building in commercial use located to the rear of Fortess Road, and accessed via a narrow road between Nos 75 and 77 Fortess Road. The rear windows of residential units in the upper floors of buildings fronting Fortess Road are approximately 4m from the eastern elevation of the appeal property. No 77, to the west, is separated by approximately 4m from the western elevation of the appeal building, and appeared from the site visit to be in commercial or mixed commercial and residential use.
7. The proposed internal arrangements are such that there would be four flats on each of the basement, ground, first and second floors. The existing window openings would remain, providing a dual aspect to each flat. However, the proximity of surrounding buildings is such that there is a reasonable likelihood there would be some overlooking of habitable windows in the proposed units, with a consequent impact on privacy for the occupiers of those units. The Council contend that this would interfere with Article 8 of the European Convention on Human Rights (ECHR), which provides that:
- 8(1) everyone has the right to respect for his private and family life, his home and his correspondence, and that
- 8(2) there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
8. Further to the above, an appeal by Utopia Village Sales Ltd¹, against the decision of the Council of the London Borough of Camden to refuse prior approval for the change of use from offices (Class B1(a)) to residential (Class C3) was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because it involved proposals which raise important or novel issues of development control and/or legal difficulties.
9. The Inspector considered as a main issue "whether, as a matter of law, it is open to the Secretary of State to refuse an application for prior approval made

¹ APP/X5210/A/14/2212605

under condition J.2 of Class J, Part 3 of Schedule 2 of the GPDO on the ground that the permitted development would result in overlooking and loss of privacy to the occupiers of existing residential properties, contrary to Article 8 of the ECHR.

10. The Secretary of State agreed with the Inspector that the provisions of paragraph N (now paragraph W), which state that the local planning authority must have regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; make it clear that the Framework cannot be taken into account so far as it addresses matters outside the subject matter of the prior approval.
11. Moreover, whilst the Secretary of State found that it would be open to him to refuse an application for prior approval made under condition J.2 of Class J, on the ground that the permitted development would result in overlooking and loss of privacy to the occupiers of existing residential properties, if he finds that it may be contrary to Article 8 of the ECHR; in that particular case, he found that there is a possibility that a similar impact might occur given the potential for the offices to be occupied during evenings and weekends, and that existing residents would have been aware that their properties were overlooked by offices at the site. The current appeal site is in the same local authority area and has a similar urban context of a relatively constrained site.
12. Furthermore, he found that even if there was some interference with Article 8(1), it would be justified by the planning benefits of the development, including the boost to the supply of housing at a time of national need. Thus the underlying purpose of Class J to streamline the process by which planning permission of this kind can be obtained would be defeated if a detailed consideration of residential impacts were undertaken in every case. Consequently, the Secretary of State confirmed that Class J is compatible with Article 8, so that the grant of prior approval in a particular case will be justified under Article 8(2) by the general benefits of the legislation, even in a case where there is a sufficiently substantial impact to raise an issue under Article 8(1).
13. Taking all of the above into account, I conclude that as the matters raised by the Council in relation to living conditions go beyond the scope of the issues specified in paragraph O.2, they are not relevant to the determination of this appeal.

Highway Safety

14. The proposal would involve internal reconfiguration including the installation of internal walls, and kitchens and bathrooms for individual units. Section 8.8 of the Council's Camden Planning Guidance 6 Supplementary Planning Guidance (CPG6) states that construction management plans are required for developments that are on constrained sites and for developments that create 10 or more dwellings.
15. Due to the narrow access to the appeal property which is shared by vehicles, cyclists and pedestrians, there is potential for conflict with construction vehicles. A construction management plan would therefore be necessary to manage vehicle movements during the construction process. Although the Council consider a legal agreement is required to secure the management plan,

- I consider the matter could be dealt with satisfactorily by an appropriate condition requiring the details to be submitted to and agreed by the local planning authority.
16. The Council consider a legal agreement is necessary to secure the retention of the 14 proposed cycle parking spaces in the basement, but the spaces are clearly shown on drawing no. 1-500-115, and an appropriate condition requiring the retention of these spaces would overcome the Council's concern in this respect.
 17. The Council also contends that a planning obligation is required towards highways improvements in the vicinity of the site, including the reinstatement of any damage to artificial stone paving slabs from construction traffic, the relocation of existing street furniture such as redundant sign posts and any other works required as a result of the development. The estimated figure for such works is £9,200. The appellant has provided a signed and executed unilateral undertaking in regard to this matter for the aforementioned sum but contests the need for the contribution.
 18. The Council have not provided any detailed information to support the estimated figure, but I note that the contribution is also intended to address existing maintenance issues, as well as improving the public realm directly adjacent to the site. Addressing existing deficits in highways infrastructure would not be directly related to the development. In addition, the replacement of any broken paving slabs arising from the construction works could be managed by the Highway Authority outside the planning process. As such I consider that the proposed highways contribution would not be necessary, fairly and reasonably related to the development, or required for the development to be acceptable, and thus would not meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010, or paragraph 204 of the Framework.
 19. With regard to car parking, Policy CS11 of the Camden Core Strategy (CS) (2010) seeks to minimise provision for private parking in new developments, through, amongst other things, car free developments in the borough's most accessible locations. The appeal property has excellent public transport accessibility with frequent bus services and Underground and Overground stations within walking distance nearby. As such, alternatives to the private car would be available to future occupiers.
 20. The Council contends that if all residents of the proposed units were to apply for parking permits, it could add up to 32 vehicles to the road network. This is not disputed by the appellant. Fortess Road is part of the East Kentish Town Controlled Parking Zone (CPZ) which operates on Monday to Friday 0830 to 1800 with shared business, residents and pay and display bays on Fortess Road and nearby Lady Somerset Road. The Council's records show the CPZ has a ratio of 0.84 parking permits to parking spaces. The proposal would thus have a severe impact on parking stress in the local area, if it were not a car free development. The appellant has submitted a signed and executed UU to secure car free development. The Council has confirmed it would overcome the concerns reflected in the second reason for refusal. I am therefore satisfied that the development would not have a adverse impact on highway safety, and would accord with CS Policy CS11 and Regulation 122 of the CIL Regulations and with paragraph 204 of the Framework.

21. For all the above reasons I conclude that the proposed development would not result in an adverse impact on transport and highways in the locality, and would accord with Policies DP18 (Car Free Housing) and DP19 (Managing the impact of parking) of the Camden Development Policies DPD (2010), and CS Policy CS11. It would also accord with CPG6 (Amenity) and CPG7 (Transport), and would not be contrary to the Framework in respect of promoting sustainable transport.

Other Matters

22. Concerns have been raised by businesses occupying the building that approximately 60 staff will have to relocate as a result of the development. However, this matter does not fall within the conditions specified in Class O of the GPDO, and as such cannot be taken into consideration in determining this appeal.

Conclusion

23. For the above reasons I have found that the proposed scheme would be acceptable in terms of its impact on transport and highways, and that the Council's concerns in this regard could be dealt with adequately either through a legal agreement or through the imposition of appropriate conditions.
24. I have also found that the Council's concerns regarding the impact of the proposal on the living conditions of existing occupiers of adjacent residential properties would be outside the scope of matters to be considered under Class O of the GPDO.
25. I conclude that the appeal should be allowed and approval granted. In granting approval, the appellant should note that the GPDO requires at paragraph O.1(c) that the development is not permitted if the use of the building for Class C3 of the schedule to the Use Classes Order was begun after 30 May 2016. In addition, I have imposed conditions requiring a construction management plan, and the provision and retention of secure bicycle parking spaces within the building, in the interests of highway safety.

Claire Victory

INSPECTOR

Conditions

- 1) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 2) The residential units hereby approved shall not be occupied until the cycle parking facilities for 14 cycles as shown on drawing no. 1-500-115 have been installed in their entirety. The cycle parking facilities shall be permanently retained thereafter.