



Appeal Decision

Site visit made on 22 April 2014

by **S Stevens BSc (Hons) MSc Dip TP DMS MCMi MRTPI**

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

Decision date: 9 July 2014

Appeal Ref: APP/H3510/A/13/2209178 Waterwitch House, Newmarket CB8 8RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class J of the Town & Country Planning General Permitted Development Order 1995 (as amended).
 - The appeal is made by Child Graddon Lewis Ltd against the decision of Forest Heath District Council.
 - The application Ref F/2013/0344/P3JPA, dated 21 June 2013, was refused by notice dated 20 August 2013.
 - The development proposed is for conversion of existing ground, first and second floor levels from office B1(a) to residential apartments class C3 comprising 1N^o two bedroom unit, 16N^o one bedroom unit and 8N^o studio units.
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)(GPDO) for conversion of existing ground, first and second floor levels from office B1(a) to residential apartments class C3 comprising 1N^o two bedroom unit, 16N^o one bedroom unit and 8N^o studio units at Waterwitch House, Newmarket CB8 8RX in accordance with the details submitted pursuant to Schedule 2, Part 3, Class J of the GPDO, subject to the following condition:
 - 1) The use as residential apartments class C3 shall not commence until the areas within the site shown on drawing No. 12046 295 Rev A for the purposes of manoeuvring and parking of vehicles and bicycles has been provided and thereafter those areas shall be retained and used for no other purposes.

Application for costs

2. An application for costs was made by Child Graddon Lewis Ltd against Forest Heath District Council. This application is the subject of a separate Decision.

Procedural matter

3. Counsel's advice obtained by the appellant argues that the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) require the local planning authority to assess the proposed development solely on the basis of its impact on transport and highways; contamination risks on the site; and flooding risks - taking into account any representations received. However, changes to the provisions of class N of part 3 of Schedule 2 of the GPDO, made in April 2014 made it clear that a

local planning authority may refuse an application where, in the opinion of the authority, the proposed development does not comply with any conditions, limitations or restrictions specified in the GPDO as being applicable to the development in question. My determination of this appeal has been made in the same manner.

4. Since the submission of the appeal the Council has withdrawn, on 11 February 2014, its decision that it did not consider the proposal complied with the terms of Class J of the GPDO.

Reasons

5. Class J of the GPDO states a change of use from Class B1(a) to Class C3 is permitted development provided a number of criteria are met including that the building was used for a use falling within Class B1(a) immediately before 30 May 2013 or, if the building was not in use immediately before that date, when it was last in use.
6. The Council's reason for refusal was based on the view that the building was no longer in Class B1(a) use immediately before 30 May 2013 because the planning permission (F2012/0431/FUL) for serviced apartments had been implemented. The evidence submitted by both parties conflicts in respect of the extent of works carried out. The Council says, as the works had commenced and the building was no longer being used for offices, that planning permission would have been required to reuse the 1st and 2nd floor as offices again. Although the Council has subsequently withdrawn this reason as to why it did not consider the proposal was permitted development it does state that this does not imply that the Council accepts the building remained in Class B1(a) use immediately before 30 May 2013.
7. Evidence from the appellant confirmed some works had been carried out prior to 30 May 2013 and my recent visit indicated that some works had been started but not finished. At the time of my visit the property was clearly not capable of being used and that is likely to have also been the case immediately before 30 May 2013. It follows that arguments about whether the works represent the take up of any outstanding permission, lawful or otherwise, are irrelevant to my consideration of the current appeal, since, if the building was not in use immediately before 30 May 2013, then the test of paragraph J1(b) of part 3 of Schedule 2 of the GPDO is the use when it was last in use. Neither party suggests that this was anything other than Use Class B1(a) offices. On the basis of the evidence, I conclude that the application satisfies the criterion J1 (b) of Class J. Consequently, the appeal will consider whether prior approval is required for any of the matters set out in J2 of Class J.
8. The site is located close to the centre of Newmarket and is within walking distance of the local services and facilities. There are also public transport services close by. The site is therefore in a sustainable location and the proposed occupants of the development would not be solely reliant on private transport. The development would provide 22 onsite parking spaces. The local highway authority was consulted and did not raise any objections or request the submission of any transport or highway details for prior approval and I see no reason to take a different view.

9. The site is a previously developed site but there is no evidence that the site is contaminated. The Council did not raise any concerns nor ask for any details to be submitted for prior approval and on the evidence before me I come to the same view.
10. The site and an adjacent storm drain are within Flood Zone 2, as defined by the Environment Agency. The site has been the subject of a flood risk assessment which concluded that no flood risk mitigation measures are required; that there would be no offsite impacts as the development would not increase the impermeable area and would not increase surface water run off; and the anticipated flood risk and residual risks are limited due to the height of the existing ground floor level above the 1 in 100 year modelled level. The Environment Agency was consulted and did not raise any objections to the development or request the submission of any details for prior approval. I see no reason to take a different view.

Conditions

11. The Council has requested, if the appeal is allowed, that a condition be imposed requiring the provision and retention of vehicle parking. The roads in the vicinity of the appeal site are narrow and I consider the provision of off-road parking is necessary to ensure the safety of highway users and the free flow of traffic on the highway and I shall therefore impose such a condition.

Conclusion

12. I conclude that the appeal should be allowed and approval granted subject to the condition referred to above. In granting approval the Appellant should note that the GPDO requires at Paragraphs A4 (10), (11) and (12) that the development shall be completed on or before 30th May 2016 and that the developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion. Such notification shall include the name of the developer; the address or location of the development, and the date of completion.

Sarah Stevens

INSPECTOR