



Appeal Decision

Site visit made on 28 February 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2023

Appeal Ref: APP/T0355/W/22/3294385

Berkshire House, High Street, Ascot SL5 7HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Threadneedle Property Unit Trust against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/02260, dated 19 July 2021, was refused by notice dated 21 September 2021.
 - The development proposed is the change of use from offices (Class B1(a)) to 'residential' (Class C3) (30 units) under Class O, Part 3, Schedule 2 of the GPDO
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity GPDO within the description of development refers to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
3. The appellant has submitted amended plans, an updated schedule of accommodation (SA); and additional information relating to daylight and sunlight assessments. This would represent new information, and the appeal process should not be used to evolve a scheme. Nevertheless, I am satisfied the amended plans and updated SA would not alter that proposed, or the size of any individual unit. The daylight and sunlight assessments are specific technical documents submitted in response to one of the reasons for refusal and also do not physically alter the proposed scheme. As all parties have had opportunity to comment on these documents during the appeal process, and with regard to the Wheatcroft Principles¹, I am content that no parties would be unfairly disadvantaged by my consideration of them.

Policy Position

4. Under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO, planning permission is granted for the change of use of a building and any land within its curtilage from Class B1(a)² (offices) to a use falling within Class C3² (dwellinghouses), subject to limitations and conditions.

¹ Established under *Bernard Wheatcroft Ltd v SSE* 1982

² As described within Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 as amended.

5. Where an application is made for a determination as to whether prior approval is required for development, paragraph W(3) of Part 3 provides that the local planning authority (LPA) may refuse the application where it considers that the proposed development does not comply – or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions that are applicable to such permitted development.
6. Paragraph O.2 of Part 3 requires the LPA to assess the impact of the proposed development on the (a) transport and highways impacts of the development, (b) contamination risks on the site, (c) flooding risks on the site, (d) impacts of noise from commercial premises on the intended occupiers of the development, and (e) the provision of adequate light in all habitable rooms of the dwellinghouses (in this appeal referred to as residential units); and the provisions of paragraph W of Part 3.
7. Article 3(9A) of the GPDO also states that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse where (a) the gross internal floor area is less than 37 square metres in size, or (b) that does not comply with the nationally described space standard.

Main Issues

8. There is no dispute that the proposed development would comply with the criteria set out in Paragraph O.1 of Part 3, and that the proposal would not have a detrimental impact in relation to Paragraph O.2 (a), (b) and (c). Nonetheless, the application was refused by the LPA for 3 reasons, that the proposed development would fail to:
 - meet the Nationally Described Space Standards (NDSS) for units 1.13, 1.14, 2.13 and 2.14, in conflict with Article 3(9A)(b);
 - provide sufficient information to allow assessment of the noise from commercial premises on the intended occupiers in conflict with Paragraph O.2(1)(d); and
 - provide sufficient information to ensure all habitable rooms in units 1.1, 1.2, 2.1 and 2.2 are provided with adequate light, in conflict with Paragraph O.2(1)(e).
9. Therefore, the main issues are the effect of noise from commercial premises on the intended occupiers of the proposed development; and whether the proposed development would comply with the NDSS, and provide adequate natural light in all habitable rooms.

Reasons

Noise

10. The appellant submitted a Noise Exposure Assessment (NEA) with the planning application. However, it states its assessment was on the detailed analysis on road traffic noise intrusion through the external building fabric, and accordingly undertook the noise survey with this in mind. During my site visit I was able to hear noise from the ground floor commercial premises over and above the road noise, and these existing premises, as a source of noise, do not appear to have been considered within the NEA. With no specific assessment of noise created

by the commercial units and taking a precautionary approach to this issue in light of what I observed on site, I am not satisfied the evidence demonstrates that no harm would be caused to the intended occupiers of the proposed development.

11. It is appreciated that there are other examples of residential units above commercial premises along High Street. However, there is nothing before me indicating what effect those commercial premises have on the residential units, whether mitigation measures are in place or if they were assessed within the same regulatory framework as that which is before me. I am, therefore, unable to compare them to that proposed.
12. I note that the Environmental Protection Team have proposed conditions relating to internal noise levels and similar such conditions have been used in the past by the LPA. However, without knowing the scale of the existing impact it is impossible to say whether such a condition would be necessary, reasonable, or indeed achievable, in this case. That Building Regulations also guides mitigation of noise impacts for residential conversions is noted. Nevertheless, this does not negate the need to assess it under this part of the GPDO.
13. To conclude, the NEA fails to provide adequate assessment in relation to the impact of noise from commercial premises on the proposed residential occupants. Therefore, it has not been satisfactorily shown that the intended occupiers of the proposed development would not be detrimentally affected by noise from commercial premises and so the proposal conflicts with Paragraph O.2(1)(d) of the GPDO.

Space standards

14. From the information before me the main parties agree most of the proposed units would comply with the NDSS. However, there is conflict in relation to units 1.13, 1.14, 2.13 and 2.14.
15. From the original SA submitted with the application, these 4 units are identified as studio-flats, although it does not indicate the number of occupants. This has been clarified on the amended plans and SA, confirming that the studio-flats would be single occupancy. Accordingly, I am satisfied they would comply with the NDSS as issued by the Department of Communities and Local Government on 27 March 2015 and read in conjunction with the notes dated 19 May 2016.
16. It is appreciated the LPA made its assessment on the original application plans, which had shown double beds in the proposed studio-flats. Nevertheless, the submitted amended plans have replaced these with single beds, although furniture layout is not a requirement of the NDSS, thereby visually aligning with the SA and reinforcing their proposed single occupancy.
17. The proposed development would therefore comply with the space standards set by Article 3(9A) of the GPDO.

Light

18. Again, the main parties are in agreeance that the proposed development would provide adequate natural light in all the habitable rooms for most of the units, the contentious ones being units 1.1, 1.2, 2.1 and 2.2.

19. The living spaces of proposed units 1.1 and 2.1 would be single aspect, like most other units within the proposal, whilst units 1.2 and 2.2 would be dual aspect. On visiting the appeal site, it is clear the windows which would serve these 4 units are large and there is nothing physically impinging the access to daylight or sunlight beyond the bulk of the building and their orientation.
20. The submitted daylight and sunlight assessments have calculated the impact of the windows positioning, considering the spaces they would serve, the bulk of the appeal building and window orientation, using the Average Daylight Factor, of which the Vertical Sky Component is part, and No Skyline calculations. These show that the amount of light the living spaces in all 4 proposed units would receive would exceed the minimum standards and would be adequate for the associated bedrooms. As these findings align with my observations on site and there is nothing before me to contradict them, I am satisfied the proposal would be able to provide adequate natural light for units 1.1, 1.2, 2.1 and 2.2.
21. Consequently, the proposal would provide adequate natural light in all habitable rooms, in compliance with Paragraph O.2(1)(e) of the GPDO.

Other Matters

22. The appellant considers the accessible location of the proposal, and that it would contribute 30 residential units to the borough's housing supply as benefits of that proposed. However, the GPDO offers no discretion where conflict is found with its requirements. Equally Class O of the GPDO also does not permit a balance to be taken where there is a mix of compliance and conflict with separate criteria set out within Paragraph O.2(1). Consequently, the harm found in relation to Paragraph O.2(1)(e) cannot be outweighed by compliance with the other criteria or the afore mentioned benefits of the proposal.
23. Matters relating to how the LPA communicated its findings to the appellant, and dealt with the application, including proposed amendments, should be raised directly with the LPA. These issues do not affect the planning merits of the appeal before me.

Conclusion

24. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

RJ Redford

INSPECTOR