



Appeal Decision

Site visit made on 15 November 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/Y5420/W/22/3294965

222 Archway Road, London N6 5AX

- 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 PAPA Architects against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2021/2307, dated 27 July 2021, was refused by notice dated 21 September 2021.
 - The development proposed is 'change of use from offices (B1a) to residential (C3) to provide 1no. flat (revised scheme with layout changes)'.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'change of use from offices (B1a) to residential (C3) to provide 1no. flat' at 222 Archway Road, London N6 5AX in accordance with the application ref HGY/2021/2307 dated 27 July 2021 and the plans and details submitted with it including plan Nos 198-001 Rev P01, 198-101 Rev P01, 198-200 Rev P01, 98-201 Rev P01, 100-200 Rev P01, 100-202 Rev P01, and subject to the following conditions:
 - 1) The development hereby approved shall not commence until an intrusive assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority.
 - 2) The development hereby approved shall not be occupied until long-stay cycle parking spaces have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The cycle parking spaces shall be retained thereafter for this use only.

Background and Preliminary Matters

2. The conditions at O.2 of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters. In determining such an application, Schedule 2, Part 3, paragraph W(10) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
3. Since the appeal was submitted, the Building Research Establishment ('BRE') issued a new edition of its guide 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice' ('BRE 2022'). This revised and replaced the 2011 version of the guide ('BRE 2011') which had been referred to within the appellant's Daylight and Sunlight Report ('DSR'). The main parties were therefore invited to comment on the updated BRE 2022 guidance and its relevance to their cases.
4. The appellant's response included an updated daylight and sunlight analysis prepared with reference to the BRE 2022 guidance ('updated DS Analysis'), and amended plans which are also considered as part of the assessment within the updated DS Analysis. The first amended plan, plan No 100-202 Rev P01, shows a revised layout at lower ground floor level that would reduce the size of Bedroom 1 ('the Amended LG Floor Plan'). This would be only a minor internal alteration to the proposal, and the resulting room would exceed the nationally described space standard requirement for a room with a single bedspace as would be required under Article 3(9A) of the GPDO. Although the bedroom would be changed from a double to a single bedroom, this would not in my judgement materially alter the nature of the development that has been proposed. The Council was also afforded an opportunity to comment on the updated DS Analysis as well as the amended plan, albeit that it has not done so, and I am satisfied that my consideration of the updated DS Analysis and the Amended LG Floor Plan would not be prejudicial to any party. I have therefore taken them into account.
5. In the event that I was not minded to accept the Amended LG Floor Plan, the appellant submitted a further amended plan (plan No 100-202 Rev P02) which does not alter the layout of the development, but which shows an internal finishes specification. However, given my findings above and on the main issue, I have not found it necessary to consider this additional amended plan further.

Main Issue

6. Having assessed the proposal, the Council raised objections only in relation to the prior approval matter concerning the provision of adequate natural light in all habitable rooms of the dwellinghouse. The Council has not indicated that the proposal would fail to comply with Class O in other respects, and I have no compelling reasons to find otherwise.
7. The main issue is therefore whether or not prior approval should be granted having regard to whether or not there would be adequate natural light in all habitable rooms of the dwellinghouse.

Reasons

8. The GPDO does not define what is meant by 'adequate natural light'. The DSR and updated DS Analysis refer to the BRE guidance and criteria as indicators, but these are not mandatory. Nevertheless, the Council has not directed me to any alternative standards or guidance relevant to my assessment of light to the development, and from the evidence before me, I consider it reasonable to assess whether or not there would be adequate natural light having regard to the BRE guidance and criteria.
9. The appeal proposes the change of use of the ground and lower ground floor levels of the appeal building to a dwelling. The Council has not raised concerns in relation to sunlight for the development, nor in relation to daylight for the living/dining room which is proposed on the ground floor of the building, and I have no compelling reason to take a different view. The Council did however raise concerns about daylight to the bedrooms which are proposed at lower ground floor level, comprising Bedroom 1 to the rear of the building and Bedroom 2 to the front.
10. The DSR assessed daylight on the basis of Average Daylight Factor (ADF) in accordance with BRE 2011 guidance which recommends a value of 1% for bedrooms. It identifies that both bedrooms would meet the recommended ADF, albeit only just in the case of Bedroom 1 which the DSR indicates would have an ADF of 1.01%. The appellant's evidence further demonstrates that there would be good daylight distribution across the floor area of both bedrooms.
11. The Council has queried the difference in ADF for the two bedrooms, but it seems to me that the higher value for Bedroom 2 would be consistent with the larger overall area of glazing that would serve this room, together with the position of the glazing to Bedroom 1 set between adjacent buildings which would be likely to affect light reaching it. The evidence before me further shows that Bedroom 2 is of smaller size and different layout to the living/kitchen/dining room that was proposed at lower ground floor level as part of an earlier scheme dismissed at appeal¹. Since these factors would affect the assessment of ADF, I do not find it surprising or unlikely that the DSR would indicate a higher ADF value for Bedroom 2 than the living/kitchen/dining room of the dismissed scheme. Moreover, the evidence before me confirms that the assessed ADF does not include any allowance for light transmission through the glazed brick floor which would be above part of Bedroom 2, and that the BRE 2011 default values for reflectance have not been adjusted. In the absence of compelling evidence to suggest that the calculations within the DSR are inaccurate or otherwise misleading, I am satisfied that the DSR indicates accordance with the recommendations of BRE 2011.
12. Moreover, the updated DS Analysis confirms that the development would continue to meet recommendations for sunlight under the updated BRE 2022 guidance. It also indicates that the living/dining room and Bedroom 2 would both notably exceed BRE 2022 recommendations for daylight according to the Spatial Daylight Autonomy ('SDA') method, without allowance for light transmission to Bedroom 2 through the glazed brick floor. I find that there would accordingly be adequate natural light to these rooms.

¹ Appeal ref APP/Y5420/W/21/3279974

13. The SDA for Bedroom 1 as originally submitted would be 34%, below the 50% level recommended for a bedroom. However, as proposed by the Amended LG Floor Plan, SDA for Bedroom 1 would be increased to 51%. This would meet the BRE 2022 recommendation, and I am satisfied that there would also therefore be suitable daylight, and adequate natural light, to this bedroom.
14. On the basis of the Amended LG Floor Plan, I conclude for these reasons and from the evidence before me that there would be adequate natural light provided to all habitable rooms of the dwelling and prior approval should be granted. Accordingly, and insofar as they are relevant to the prior approval matter, I find that the proposal would accord with Policy D6 of the London Plan 2021 ('LP') which includes a requirement for sufficient daylight and sunlight for development, and Policy SP2 of Haringey's Local Plan Strategic Policies 2017 ('LPSP') which requires regard to standards within the LP. The Council has additionally referred to Policy SP2 of the LPSP and Policy DM12 of the Development Management Development Plan Document 2017, but since these policies do not directly address natural light, I consider them less relevant to the prior approval matter.

Other Matters

15. The appeal site is within flood zone 1 (low risk of flooding), and while the Council has identified that it is within a critical drainage area, the Lead Local Flood Authority has confirmed that it is not aware of any specific flooding issues in the vicinity of this site, and that it has not been notified by the Environment Agency of any critical drainage problem. The Council is satisfied that there would be adequate means of escape from the site, and has not identified flood risk to be a concern. I have no firm reason to find differently.
16. Matters relating to noise or pollution generated by traffic, and possible overlooking of the dwelling from upper floor flats are outside the scope of the prior approval matters relevant to the assessment of the appeal.

Conditions

17. Development permitted under Class O of the GPDO must adhere to the conditions set out at Paragraph O.2. These include that the development must be completed within a period of 3 years starting with the prior approval date. The provisions at Paragraph W(12) of Part 3 further require that the development must be carried out in accordance with the approved details. Conditions suggested by the Council that would duplicate these requirements are not therefore necessary.
18. Paragraph W(13) of Part 3 also allows that prior approvals may be granted subject to conditions reasonably related to the subject matter of the prior approval. A condition to secure cycle parking is necessary to support sustainable transport choices and address the prior approval matter of the transport and highways impacts of development. I have however amended the Council's suggested condition in the interests of clarity and precision as to what is required, and to avoid unnecessary prescription of standards which the Council would be able to consider in assessing the details submitted.
19. Although not included on the Council's list of suggested conditions, the Council's report on the application noted that a condition would be attached in relation to land contamination investigation works and remediation. Given the

Desk Study/Preliminary Risk Assessment report submitted with the application which recommended that an intrusive investigation is undertaken, I agree that such a condition would be necessary to address contamination risks on the site. The main parties were able to comment on the wording of the condition.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

J Bowyer

INSPECTOR