

NEWBURY 18/01429/PACOU Pins Ref 3202287	4 Gordon Road Newbury Mr and Mrs S Holland	Application to determine if Prior Approval is required for the change of use to two- storey one-bedroomed dwelling	Delegated Refusal	Allowed 14.1.19
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Background and Main Issues

Schedule 2, Part 3, Class PA of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwelling houses) of that Schedule.

This is subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as regards the transport and highways impacts of the development; contamination risks in relation to the building; flooding risks in relation to the building; and where the building is within an area that is important for providing industrial services or storage or distribution services, whether the introduction of, or an increase in residential use of premises in the area would have an adverse impact on the sustainability of those services.

The Council is concerned that the proposed use so close to a neighbouring building in office or B2 (general industrial) use may threaten its sustainability. It also objects to the lack of car and cycle parking. The main issues are, therefore:-

- whether the proposed change of use would have an adverse impact on the sustainability of the industrial, storage or distribution services in the area; and
- whether the proposed change of use would have an adverse impact on transport and highways, in particular, the surrounding roads in terms of safety and congestion, and the amenity of surrounding occupiers.

Reasons

Impact on the sustainability of services in the area

The appeal building stands next to an industrial estate in an area designated in the development plan as a Protected Employment Area. A second area under the same designation lies to the north. However, it is separated from this area by housing and it is sufficiently distant not to be a compelling factor in the consideration of the sustainability impacts of this proposal.

The Council has granted planning permission for the redevelopment of the industrial estate which contained around 4,100m² of floor space, for 167 flats. At the time of the Inspector's visit, its demolition appeared almost complete, with only one building still standing and in use. It appears, therefore, that the only services in the area whose sustainability could be adversely affected by the proposal are those provided by the last building standing (the B2 building).

This B2 building is well separated from the appeal building, and its elevation facing the appeal building contains windows serving offices and the main entrance, which are unlikely to cause disturbance. The appeal building has no openings facing directly towards the B2 building. It has only a small window in the wall looking onto the parking area of the B2 building. The Inspector could identify no conflict between the proposed change of use and the B2 building which would prejudice its sustainability.

Further, the appeal building is domestic in footprint and height and accessed from the back of the houses fronting Gordon Road, whereas the B2 building is of a completely different, greater scale and accessed off Kings Road via the entrance to what used to be the industrial estate. Given the disconnection between the buildings, their difference in scale, and their different accesses, he saw no adverse impact from the proposed change of use on the sustainability of the light industrial, storage or distribution services in the area.

Impact on transport and highways

The Council advises that future occupiers of the development, being residents of Gordon Road, a private street, would be unable to obtain permits to park on Kings Road, which is in a controlled parking zone. However, they would be able to park on Gordon Road. This appeared to the Inspector to contain sufficient

space to accommodate the parking needs of the houses which are accessed from it. At the time of his visit, on a weekday morning, the parking space in Gordon Road was substantially under-occupied.

The Inspector appreciated that parking demand may increase in the evenings and at weekends, and that Gordon Road appeared to be an uncontrolled street in an area of parking pressure. However, there is no substantive evidence that there would be insufficient space to accommodate the additional car parking space which the Council's parking standards indicate that a development like this might generate. Moreover the Council acknowledges that the parking requirement for the proposed use would be less than for the light industrial use.

The Council seeks storage for a cycle, referring to its cycle standards. However, the building is located very close to the centre of Newbury and to its station, shops and services. A lack of space to store a cycle would not prejudice the future occupiers' access to these facilities, or result in additional pressure on parking in Gordon Road. The lack of storage for a cycle would not result in an adverse impact on the surrounding roads.

In these circumstances, the Inspector could not conclude that the proposed change of use would have an adverse impact on transport and highways, in particular, the surrounding roads in terms of safety and congestion, and the amenity of surrounding occupiers.

Conclusion

For the above reasons, and having taken account of all other matters raised, the Inspector concluded the appeal should be allowed and prior approval for the change of use should be granted. The time limit condition for completion of the development at paragraph PA.2(2) of the GPDO applies as do the provisions of paragraph W of the GPDO as they relate to the submitted plans and approved details.

Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from premises in light industrial use (Class B1(c)) and any land within its curtilage to a dwelling house (Class C3) at 4c Gordon Road, Newbury, Berkshire RG14 5RP in accordance with the terms of the application Ref 18/01429/PACOU, dated 4 June 2018, and the plan submitted with it.

Application for Costs

An application for costs was made by Mr & Mrs Scott Holland against West Berkshire Council. This application is the subject of a separate Decision.

Decision

The application for an award of costs is allowed in the terms set out below.

Reasons

The Planning Practice Guidance (the PPG) advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. It sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications which should clearly be permitted.

The appellants claim that the Council treated their application as an application for planning permission rather than as an application for prior approval which benefits from the principle of the development being accepted through the General Permitted Development Order 2015 (as amended). A prior approval application should not be determined against the development plan. Nonetheless, development plan policies can be material considerations insofar as they relate to the issues, and if they contain material that is relevant to the planning judgement.

The Inspector acknowledged that the decision notice is confusing in including a reference to a policy in the development plan. However, the header of the reason for refusal directs the reader to the relevant section of the Order, and the rest of the reason encapsulates where the Council found harm against that section. The Council's statement also referred to development plan policies, but only to those which were relevant in connection with the conditions in the Order, which it also referenced. In his view, though it contains frequent assessments against development plan policies, on a fair reading of the Council's evidence, it did not determine the application against the development plan.

Notwithstanding this, prior approval should clearly have been granted. In terms of the sustainability of services, with all but one building in the industrial estate demolished, the impact of the change of use of this small workshop at the back of houses in a neighbouring road did not justify refusal.

Nor was there any conflict between the proposed use and the last building standing. There was no substantive evidence to support the Council's claim regarding the lack of parking space in Gordon Road in the evenings, and by its own account the parking requirement for the residential use proposed was less than the light industrial. Though the Inspector found no adverse impact from the lack of cycle storage, even if this were the case, a condition could have secured this, much as proposed by the Council in its statement. To refuse the application on the basis of something which could have been resolved by a condition was unreasonable.

The Inspector acknowledged the Council's reference to an appeal decision for a prior approval not far from this site. However, that case concerned parking for 24 dwellings rather than one as in this appeal. That Inspector found only 3 parking spaces within 500m of that appeal site, whereas he saw ample space close to this site. There are no parallels between these cases which directed him to find an adverse impact on transport and highways.

For the reasons set out above, the Council's behaviour was unreasonable with respect to the substance of the matter under appeal. As a consequence, the applicant has incurred unnecessary and wasted expense in the appeal process. Having regard to all other matters raised, an award for costs is therefore justified.

Conclusion

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that West Berkshire Council shall pay to Mr & Mrs Scott Holland, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to West Berkshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

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