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## Appeal Decisions

Site visit made on 5 September 2023

**by K L Robbie BA (Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

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### **Appeal A Ref: APP/H4505/W/23/3322845**

#### **32 Wesley Court, Blaydon Central, Blaydon, Gateshead NE21 5BT**

- 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 MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
  - The appeal is made by Watson of Praxis against the decision of Gateshead Metropolitan Borough Council.
  - The application Ref DC/22/01392/CDPA, dated 23 December 2022, was refused by notice dated 14 April 2023.
  - The development proposed is the conversion of first floor commercial unit to create 4 flats - mix of 1 & 2 bed.
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### **Appeal B Ref: APP/H4505/W/23/3322854**

#### **4 Wesley Court, Blaydon Central, Blaydon, Gateshead NE21 5BT**

- 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 MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
  - The appeal is made by Mr Nigel Watson of Praxis Real Estate Management Ltd against the decision of Gateshead Metropolitan Borough Council.
  - The application Ref DC/23/00148/ODPA, dated 15 February 2023, was refused by notice dated 14 April 2023.
  - The development proposed is the conversion of vacant First Floor Class E premises to C3 residential (2no. 1 bedroom flats). No change to ground floor.
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### **Appeal C Ref: APP/H4505/W/23/3322876**

#### **13-14 Wesley Court, Blaydon Central, Blaydon, Gateshead NE21 5BT**

- 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 MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
  - The appeal is made by Mr Nigel Watson of Praxis Real Estate Management Ltd against the decision of Gateshead Metropolitan Borough Council.
  - The application Ref DC/23/00149/ODPA, dated 15 February 2023, was refused by notice dated 14 April 2023.
  - The development proposed is the conversion of vacant First Floor Class E premises to C3 residential (3no. 1 bedroom flats). No change to ground floor.
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## **Decisions**

1. Appeals A, B and C are dismissed.

## **Procedural Matters**

2. The appellants name and company in Appeal A differs slightly from those in Appeals B and C. I am satisfied that the appellant is the same person, representing the same company for all three appeals, and I have determined them accordingly.

3. The Local Planning Authority have confirmed that they no longer wish to defend refusal reason 2 relating to flood risk for Appeal A. I have determined the appeals accordingly.
4. As set out there are three appeals located within the Blaydon Shopping Centre. All three proposals involve the conversion of upper floors into residential accommodation. I have considered each proposal on its individual merit. However, as the main issues for all three appeals, except for Appeal A with respect to flood risk are the same, to avoid duplication, I have dealt with the schemes together, except where indicated.

### **Preliminary Matter**

5. Article 3(1) and Schedule 2, Part 3, Class MA, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) provides for a permitted development right for the change of use of a building falling within use class E (Commercial, Business and Service) to class C3 (dwellinghouses). This is subject to limitations and conditions, as set out in subsequent paragraphs of Class MA. The GPDO is clear that a "*local planning authority may refuse an application where in the opinion of the authority..... the developer has provided insufficient information for the authority to establish whether the proposed development complies with any conditions*"<sup>1</sup>.

### **Main Issues**

6. The main issue for all three appeals is whether the proposed development would comply with the limitations and conditions of the permitted development right relating to:
  - (i) the transport impact of the development taking particular account of safe access to the site in accordance with the provisions of Class MA Condition MA.2(2)(a);
  - (ii) the impact of noise from commercial premises on the intended occupiers of the development in accordance with Class MA Condition MA.2(2)(d) of the GPDO; and
  - (iii) the provision of adequate natural light in all habitable rooms in accordance with the provisions of Class MA Condition MA.2(2)(f) and Paragraph W.(2A) of the GPDO.
7. For Appeals B and C an additional main issue is whether the proposed development would comply with the limitations and conditions relating to flood risk in relation to the building in accordance with the provisions of Class MA Condition MA.2(2)(c) of the GPDO.

### **Reasons**

8. The appeal sites are all located within the upper floor of a purpose-built shopping centre which consists of two blocks of commercial premises at ground floor with a pedestrian walkway running through its centre and service areas to the rear on either side. Planning permission has been applied for separately for alterations to the premises including the insertion of doors and windows at first

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<sup>1</sup> Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Paragraph W.(3)(b)

floor level and a balustrade and raised roof to a stair well<sup>2</sup>. I have no evidence before me in relation to the outcome of this application.

### Transport

#### *Appeal A*

9. Pedestrian access would be via a door in the front elevation of the building within the parade of shop units. This is only clearly apparent from the appellant's appeal statement which highlights the access door on the front elevation. It is, however, not clear that this is proposed from the plans submitted, and upon which the local planning authority was required to use to determine the application. Whilst access from within the parade of commercial units would not pose a threat to pedestrian safety, access to the rear into the service yard is also evident from the plans. On my site visit I observed HGVs and commercial vehicles within this area. The enclosed nature of the service yard requires vehicles to reverse to make deliveries to commercial units or turn to leave. On this basis, the proposal would introduce a conflict between residential occupiers and commercial users of this space which does not exist at present.
10. No dedicated car parking provision is associated with the proposal. The appellant states that the proposal would be car-free, and no parking permits would be issued to occupiers of the units. However, I have no mechanism in the form of a legal agreement before me to secure this. In the absence of such, I cannot be certain that the development would be car-free.
11. It is not clear from the application plans where the cycle storage illustrated in elevation would be located and also where and how refuse would be stored and collected. All these matters are required to be clearly set out so that the local planning authority can be certain that the proposal would not lead to adverse transport impacts and that the site can be safely accessed by all modes of transport including walking.
12. In the absence of clarity on the pedestrian access, cycle parking and refuse storage to Appeal A the proposal conflicts with Class MA Condition M.2(1)(a). I therefore conclude that the transport impacts of the development particularly in relation to safe site access would be unacceptable.

#### *Appeals B and C*

13. Pedestrian access to premises for Appeals B and C would be via the service yard to the rear of the shopping centre. The service yard is accessed directly from a slip road off Blaydon Highway, a busy dual carriageway serving the local area.
14. The appellant acknowledges that there are risks associated with the proposed access. Pedestrians would be expected to access the premises from the east across a large junction splay, then alongside a landscaped area before crossing the service yard. On my site visit the route was blocked by parked vehicles and large vehicles were both stationary and moving within the service yard. Whilst I appreciate that the numbers of HGVs using this area may currently be relatively low, this may not always be the case. Nevertheless, pedestrians would not be expected by drivers of commercial vehicles to be encountered

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<sup>2</sup> Local Authority reference DC/22/01391/FUL

within a commercial service yard in any event. I also note that no footway is provided into service yard from the bus station to the west where occupiers of the dwellings might reasonably be expected to access the building from.

15. The appellant states that an elevated walkway along the rear elevation of the building could also be used to provide safe access to the building. However, this is not level, with a series of steps up and down along its length. Moreover, it provides service access and loading facilities for several commercial premises which would create a potential conflict between pedestrians accessing residential units and commercial activities taking place in connection with the shopping centre units.
16. No vehicular access or car parking is proposed. It is unclear as to where occupiers of the units would park. No suggestion has been made that the proposals would be car-free. Even if that were the case, I have no mechanism before me by which this could be secured.
17. Consequently, I conclude that the transport impacts of the development particularly in relation to safe site access in relation Appeals B and C would be unacceptable. The proposal therefore conflicts with Class MA. Condition M.2(1)(a).

#### Noise

18. A Noise Impact Assessment (NIA) with Appeal A demonstrates that background noise during the day and into the evening is high, the principal contributors being traffic on local roads, including a bus stop, pedestrians using the Blaydon Shopping Centre walkway and also service yard activity. NIA monitoring points were located on the facades of the building relating to Appeal A. No NIA for Appeals B and C is before me, and no monitoring points have been undertaken which would be representative of these appeal sites. I note that best practice in relation to weather conditions has not been followed in the NIA. Furthermore, anomalies in the results are also not explained. These factors therefore cast doubt upon the findings of the assessment.
19. Whilst the NIA recognises that service yard activity would be a source of noise, no demonstration has been robustly made as to its impact of these sources on future occupiers of the dwellings. Furthermore, extraction and air conditioning units are located on the rear of the building for Appeal A and air conditioning units were evident on the rear elevation of the building for Appeals B and C. No reference is made to noise from plant and equipment in the NIA. I therefore cannot be certain that the living conditions of future occupiers would not be adversely affected as a result.
20. For the above reasons, it has not been robustly and compellingly demonstrated that there would not be adverse impacts from noise from commercial premises on the intended occupiers of the proposals. The proposals would therefore conflict with condition MA.2(2)(d) of Schedule 2, Part 3, Class MA.

#### Adequate Natural Light

21. The term 'habitable rooms' is defined in Part 3, paragraph X of the GPDO as meaning '*any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms*'.

22. Condition MA.2(2)(f) of Class MA requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. As shown on the existing drawings, existing openings would be insufficient to meet this requirement. Given that Class MA does not permit building operations to facilitate the change of use, the appellant states that he has submitted a planning application for a significant number of new windows to be installed in each of the appeal properties.
23. Whilst it is evident that all the habitable rooms would be provided with windows subject to the grant of separate planning permission, I have no substantive evidence before me that these would provide adequate natural light into the rooms. Furthermore, I have not been provided with any legal mechanism to link the planning permission to the appeal proposals to ensure that the necessary building operations are carried out prior to the occupation of the properties as dwellings. Moreover, I have not been provided with evidence that planning permission is in place. In this instance, I do not consider a planning condition for this purpose to be appropriate as it would be unable to satisfy the reasonable and precise elements of the tests set out in paragraph 56 of the National Planning Policy Framework.
24. For these reasons, I conclude that the proposals would not provide adequate natural light in all habitable rooms of the dwellinghouses and would therefore not accord with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA.

*For Appeals B & C only - Flood Risk*

25. The appeal premises are located within Flood Zone 1. However, the area to the rear of the premises is at high risk from surface water flooding. Although the dwellings themselves, being at the upper floors of the building would not be at risk, access to and from them during times of flood may be problematic. The appellant states that the elevated walkway along the rear of the building could provide safe access for residents in times of flood. However, access to the walkway is gained from the area liable to flooding and as previously set out it would not be a satisfactory route to the building in any event.
26. Given the potential conflict and impediments outlined above, I am not satisfied that occupiers of the proposed dwellings would be adequately protected from the risks of flooding. Conflict therefore arises with Condition M.2(1)(c) of Schedule 2, Part 3, Class MA.

**Other Matters**

27. I acknowledge that the appeal premises are located in an area well served for shops and services and are easily accessible by a range of modes of public transport. The sites are on the Council's brownfield register and would provide homes in an area of housing need. The appeal sites are also not located in a conservation area or within any other designation. These are not factors which are not relevant in the determination of appeals for prior approval required by permitted development rights set out in the GPDO and do not diminish the harm that I have found on the main issues.
28. I also note that positive comments regarding residential development within the locality have been made by another department of the Council. However, I am mindful that pre-application discussions are informal and not binding on

any future decision the local planning authority may make once a proposal has been subject to the formal planning process.

29. Reference has been made to another residential scheme in Blaydon. I do not have the details of this scheme before me. I do not know its status with regard to planning permission and therefore cannot draw any direct comparison with the proposals that would weigh in their favour. In any event I have determined the appeals with specific reference to the requirements of Class MA of the GPDO.
30. I note comments that the appellant has made with regard to the Council's handling of the applications. This is not a matter which I can take into account in a Section 78 planning appeal and does not alter my findings for which I have had regard to the requirements of the permitted development right only.

### **Conclusion**

31. For the reasons set out above, I conclude that Appeals A, B and C should all be dismissed.

*KL Robbie*

INSPECTOR