



Appeal Decision

Site visit made on 5 April 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2022

Appeal Ref: APP/T0355/W/21/3276034

3A Altwood Road, Maidenhead SL6 4PB

- 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 M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Neil Chadda of Nevo Partnership against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00567, dated 2 December 2020, was refused by notice dated 26 April 2021.
 - The development proposed is described as 'application for prior approval under Class M of Schedule 2 of Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the change of use from A1 to C3 to create 6 no. dwellinghouses and building operations reasonably necessary to facilitate the conversion'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Neil Chadda of Nevo Partnership against Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Preliminary Matters

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. The effect of this amendment in relation to this appeal was to revoke A1, A2, A3 and B1 use classes and merge them into a new Class E 'Commercial Business and Service.'
4. As from 1 August 2021, a new 'Class MA' was brought into effect in Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) to allow any use within the newly formed Use Class E to change to residential, subject to conditions and limitations. However, applications for prior approval under Part 3, Class M will continue to apply until 31 July 2021. The Council confirmed the date of the application as 1 March 2021. It therefore remains to be determined under Class M of the GPDO and its conditions and limitations.

Background and Main Issue

5. Schedule 2, Part 3, Class M of the GPDO permits the change of use of a building from a use falling within Class A1 (shops) or Class A2 (financial and professional services) to a use falling within Class C3 (dwellinghouses), along with building operations reasonably necessary to convert the building.
6. There is no dispute that the proposal meets the requirements of Paragraph M.1 of the GPDO and so is permitted development under Class M, subject to the prior approval of certain matters. For permitted development under Class M(a) and M(b), Paragraph M.2(1) of the GPDO requires prior approval of 5 matters. Based on the submissions and the Council's reason for refusal, relevant to this appeal is (e) the design or external appearance of the building.
7. Therefore, the main issue is:
 - whether or not the internal space can be considered as part of an assessment under Part M.2(1)(e) in relation to design, and if so, whether that represents acceptable design

Reasons

8. The proposed conversion would provide 6 studio flats. These would range in size from 16.09m² to 22.74m² of internal floorspace. Prior approval was refused on the basis that the dwellings would fail to meet minimum internal floor space standards as set out in the nationally described space standards (NDSS) which would result in cramped and substandard amenity for future occupiers. The Council considered this represents poor design.
9. From 6 April 2021, Article 3(9A) of the GPDO provides that Schedule 2 does not grant permission for any new dwellinghouse where the gross internal floorspace is less than 37m² or the dwellinghouse does not comply with the NDSS issued by the Department for Communities and Local Government on 27 March 2015.
10. Since the application for prior approval was made before 6 April 2021, it falls to be considered under the transitional arrangements, as set out in the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020. Part 4, Section 12(2) of these Regulations states that the amendment to the GPDO made by Regulation 3 does not have effect in relation to development under Class M where an application for prior approval is submitted before 6 April 2021. On this basis, the requirement to provide a minimum gross internal floorspace of 37m² or meet the nationally described space standards would not apply to the appeal scheme.
11. The GPDO does not specify what it envisages as being captured under Part M.2(1)(e) in respect of the design or external appearance. Whilst design is not defined, the National Planning Policy Framework (the Framework) in seeking well-designed places requires planning to achieve a good standard of amenity.
12. The appellant considers it only relates to the visual appearance of the building since this criterion is only included with other Parts of the GPDO, notably Classes N and Q, where a conversion is allowed with external works also being permitted. Where no external works are permitted, such as under Classes O, P and PA, the criterion is not included. On this basis, the appellant considers the

Council, in assessing the size of the dwellings and therefore internal works, has misapplied this criterion.

13. Whilst the appellant's arguments in this regard are noted, the exclusion of design or external appearance from certain Classes of permitted development does not confirm that design must only relate to external changes. It seems to me that the consideration of 'design' can be quite broad in its application, relating to both internal and external spaces. For this reason, I do not consider it would only be confined to external appearance. Whilst I appreciate that there is no minimum requirement at this stage, I consider that design is capable of encompassing such matters and that the NDSS do provide a useful indication of what is an acceptable space in design terms.
14. The fact that minimum space requirements have been introduced across all Classes of permitted development through Article 3(9A) of the GPDO in respect of dwellinghouses is certainly more specific and adds certainty. However, it does not mean that these matters could be disregarded previously.
15. The submitted floorplans show that each of the units would have an open plan living area. Although the units are shown to have a double bed, sitting and kitchen area as well as a small bathroom, there would be very limited space for furniture and storage as well as little circulation space. This would restrict the amount of space available to future occupants for day-to-day activities, such as hanging clothes out to dry, ironing or generally moving around within their home.
16. The quality of the living space is further reduced within Studio 5 which is not only the smallest unit, and less than half the NDSS recommended minimum space standard, but also an irregular shape which would further restrict its suitability for day-to-day living. In this regard, I note the submitted plans do not indicate any seating area.
17. As such, I find that the scheme, due to the inadequacy of its internal space, would not provide satisfactory living conditions for future occupiers. It would therefore fail to achieve a good standard of amenity for future users. This would amount to poor design, in conflict with the design principles of the Framework.
18. I have been referred to 2 appeal decisions for development under Class M. One at 269-271 Whippendell Road, Watford¹ and the other at 172 Whippendell Road². In both cases, the issue of internal floor area was considered in the context of whether accommodation permitted by Class M of the GDPO that had floorspace below the NDSS could be considered a dwellinghouse.
19. This is not the issue in dispute in this appeal which is concerned with whether or not the internal space can be considered as part of an assessment under Part M.2(1)(e) in relation to design, and if so, whether that represents acceptable design. Neither of the appeals to which I have been referred address this matter directly. They do not therefore alter my findings on this matter.
20. I conclude that the condition as set out in Class M.2(1)(e) in relation matters of design or external appearance of the building have not been met. I therefore

¹ APP/Y1945/W/18/3197021

² APP/Y1945/W/19/3231016

conclude that the proposal would not be development permitted by Schedule 2, Part 3 Class M of the GPDO.

Conclusion

21. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Rachael Pipkin

INSPECTOR