



Appeal Decision

Site visit made on 31 October 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18/11/2022

Appeal Ref: APP/Z5630/W/22/3293614

Fox House, rear of 137-167 Hook Road, Surbiton KT6 5AR

- 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) (England) Order 2015 (as amended) (the GDPO).
 - The appeal is made by Mr Jon Davis against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 21/03520/PAMA, dated 29 October 2021, was refused by notice dated 21 January 2022.
 - The development proposed is the change of use to two residential flats (Use Class C3).
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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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use to two residential flats (Use Class C3) at Fox House, rear of 137-167 Hook Road, Surbiton KT6 5AR in accordance with the terms of the application, Ref 21/03520/PAMA, dated 29 October 2021, and the plans submitted with it, including : PD001, PD002, PD021, PD031, PD032, PD033, PD100, PD101.

Background and Main Issues

2. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses).
3. Paragraph MA.1 of Class MA sets out a number of requirements, including (a), that the building '*has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval*'. The Council's sole reason for refusal relates to this issue. The Council considers that the development complies with the other requirements set out in this paragraph, and based on the evidence before me, I see no reason to disagree.
4. However, further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2).
5. The Council state that it did not consider the proposal against these conditions, given the conflict they identified with requirement MA.1 (a). However, the Council point to a subsequent further prior approval application submitted on

this site¹ with a similar description of development. Whilst the Council considered that the requirements of Paragraph MA.1(a) was met in that instance, conflict was found with condition MA.2 (2) (a) '*transport impacts of the development, particularly to ensure safe site access.*'. As such, the Council now also raise this as an issue relevant to the scheme before me. The appellant has had the opportunity to comment on this matter.

6. I have been provided with the officer report for the subsequent prior approval application. I note that the Council considered in that case that the development complied with the other conditions set out in Paragraph MA.2 (2) of Class MA. Based on the evidence before me, I consider that there is no reason to disagree and find that those findings equally apply to this appeal proposal given the similarities between the two schemes.
7. Accordingly, I consider the main issues in this case to be:
 - whether the proposal would be permitted development under Class MA, with particular reference to whether the building has been continuously vacant for 3 months prior to the date of the application for prior approval and meets the requirements of MA.1 (a), and if so:
 - the transport impacts of the development.

Reasons

3 Months Vacancy

8. The appellant has provided a disposal summary letter from Halifield Land, dated November 2020, stating that the property was to be sold with full vacant possession. Whilst the attached Photographic Schedule show 'existing workshop accommodation', a further marketing letter from Halifield Land, dated 24 January 2022, confirm that the property has been vacant since Q4 2020. In addition, and whilst not before me, the appellant sets out that business rates show that no business has occupied the premises since August 2019. I note that the Council does not dispute this. The application for prior approval was submitted in October 2021.
9. There is some dispute between the parties as to whether this information was originally submitted with the application. However, even if I accept the Council premise that it was not, the documents submitted with the appeal provide further information on the history of the building and does not alter the development proposed. Given the nature of the evidence I am satisfied having regard to the 'Wheatcroft'² principles that my consideration of the information would not prejudice the interests of any party.
10. I am therefore satisfied that, based on the information before me, the appeal building was vacant for at least 3 months prior to the date of the application for prior approval. Accordingly, I find that the requirements of MA.1 (a) of the GPDO are met.

¹ Application reference 22/00282/PAMA

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

Highways Impact

11. The proposal does not include any off street parking. Whilst there is a restricted car park directly next to the appeal site, the road to the rear, Verona Drive is unrestricted. I have little substantive evidence before me which indicates that existing on-street parking causes congestion within the road or has resulted in safety issues to users of the highway. Whilst I appreciate my site visit provided only a snapshot of the parking situation in the area, I observed during my visit that Verona Drive, a residential street, also had a number of spaces available.
12. The submitted Transport Statement demonstrates that the development proposal would not result in a material change in the number of trips generated by the site compared to the existing office use. The Council does not dispute these findings. Therefore, whilst the proposed 2 units would not be served by any dedicated off-street parking spaces, the proposal would result in neither a significant change from the existing situation nor unacceptable additional parking pressure on the surrounding streets.
13. Given my findings, I conclude that the parking demands that would be likely to be generated by the new units would not have unacceptable transport impacts, including in relation to highway safety or the flow of traffic in the locality, and that safe access would be provided. As such the proposal would satisfy condition MA.2 (2) (a) of the GDPO.

Other Matters

14. I note that the application has attracted letters of objection raising a number of issues. However, Unlike with an application for planning permission, the matters for consideration under this prior approval application are restricted to the conditions set out in Paragraph MA.2 (2), which does not include issues such as potential overlooking from the development. I have therefore limited my consideration to only those matters set out in the GPDO. Other than the above two matters, the Council has not raised any issues with regard these conditions and based on the evidence before me, I have no reason to disagree. With regards to the level of detail provided with the application, this is also regulated by the requirements of the GDPO and the appellant has met these requirements.

Conditions

15. Development under Class MA is permitted subject to conditions at Paragraphs MA.2.(5) and (6) which include that the development must be completed within a period of 3 years starting with the prior approval date; and that any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.
16. The Council has suggested 4 conditions. The first relates to ensuring the development is carried out in accordance with the submitted plans. I agree that this is necessary. A condition securing the materials as set out in the plans is unnecessary due to the first condition.
17. Given I have found that the transport impact of the development would be acceptable, I do not consider a condition relating to cycle storage would be

necessary. I do not consider that a condition relating to waste and recycling facilities relates sufficiently to the prior approval matters.

Conclusion

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

B Phillips

INSPECTOR