



Appeal Decision

Site visit made on 25 November 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/C5690/W/22/3301688

4 Perry Hill, London SE6 4DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr E Weisfish against the decision of London Borough of Lewisham.
- The application Ref DC/22/125420, dated 14 September 2021, was refused by notice dated 4 April 2022.
- The development proposed is the change of use of the ground floor to create 1 x 1 bedroom dwelling.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3 and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of the ground floor to create 1 x 1 bedroom dwelling at 4 Perry Hill, London SE6 4DU in accordance with the terms of application ref DC/22/125420, dated 14 September 2021 and the plans submitted with it, subject to the standard conditions set out in paragraphs MA.2.(3) and W(12) of the GPDO and the following conditions:
 - 1) Prior to first occupation, full details of secure and covered cycle parking facilities shall be submitted to and approved in writing by the local planning authority. All cycle parking spaces shall be provided and made available for use prior to first occupation of the development and retained as such at all times thereafter.
 - 2) Prior to first occupation, details of proposals for the storage of refuse and recycling facilities for the residential unit, shall be submitted to and approved in writing by the local planning authority. The facilities as approved shall be provided in full prior to first occupation of the development and retained as such at all times thereafter.
 - 3) The development shall not be occupied until details of the soundproofing for walls and/or ceilings where residential parties non-domestic use, have been submitted to and approved in writing by the local planning authority. The specification for the soundproofing shall include sound insulation against airborne noise and structural vibration to achieve levels not exceeding 30dB LAeq (night) and 45dB LAmax (measured with F time weighting) for bedrooms, 35dB LAeq (day) for other habitable rooms, for all uses permitted

by Use Class E. The approved soundproofing shall be installed prior to first occupation of the development and retained as such at all times thereafter.

Background and Main Issue

2. The Council refused prior approval as they considered that the ground floor of the site would be in mixed use and therefore would not constitute development permitted under Class MA.
3. The main issue is therefore whether or not prior approval should be granted having regard to the restrictions and requirements of Class MA.

Reasons

4. Class MA of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order subject to a number of limitations and conditions.
5. The Council consider that the retention of buildings to the rear of the appeal site within Class E, one of which would have access to a small area of amenity space means that the proposed dwelling would be directly connected to the commercial unit at the back via the open amenity space and itself has the potential for mixed use.
6. It is possible to change the use of 'part of the building' as permitted development. This is because, in Article 2(1) of the GPDO, the meaning of 'building', except for some given exclusions which do not include Class MA, includes 'part of a building'.
7. Additionally, the Explanatory Memorandum to The Town and Country Planning (General Permitted Development ETC.) (England) (Amendment) Order 2021, states at paragraph 7.7 that under Class MA 'Part of the building may change use under the right, including where the lower floors are in Commercial, Business and Service use and the upper floors residential'.
8. The Council consider that the explanatory note is related to mixed use in a site with various floors. Although this is the example given in the note, it is clear that it is 'including' such an arrangement and is therefore not a closed list. It is preceded by specific clarification that 'part of the building may change use under the right'.
9. The fact that one of the retained buildings, that would remain in Class E, is shown to have access to an area of amenity space does not prevent the implementation of the permitted development right as outlined. Furthermore, as the submitted plans show, and as I observed on my site visit, the area to be retained within Class E is accessible from the rear of the site via an archway between other commercial units.
10. It therefore follows that prior approval should not be refused for the reason given by the Council.

Other Matters

11. I note that an objection was received to the application for prior approval. The issues raised are not pertinent to the main issue or relevant to the consideration of an application for prior approval as set out. There is no substantive evidence that there would be unacceptable living conditions for future occupants or unacceptable transport impacts as a result of the development.

Conditions

12. Paragraph W(13) sets out that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
13. In the interests of sustainable travel and highway safety, conditions requiring the submission of details of cycle storage and refuse storage are necessary. In the interests of the living conditions of future occupants, details of sound insulation are necessary.
14. These details are required prior to occupation of the dwelling. As the consent is for prior approval and not planning permission, it has not been necessary to seek the written agreement of the appellant.

Conclusion

15. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed, and prior approval should be granted.

A M Nilsson

INSPECTOR