



Appeal Decision

Site visit made on 14 November 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/C5690/W/22/3299244

Kelvin House, Worsley Bridge Road, Lower Sydenham, London SE26 5BE

- 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 appeal is made by Keystone Holdings Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/22/125256, dated 28 January 2022, was refused by notice dated 4 April 2022.
 - The development proposed is prior approval for a change the use from class E to residential under class MA of the 2021 GPDO of the existing commercial floorspace to 18 dwellings (use class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted a daylight and sunlight assessment¹ (DSA) with the application which refers to the Building Research Establishment publication 'Site Layout and Planning for Daylight and Sunlight, a guide to good practice' second edition published in 2011 (the BRE Guide 2011). However, the BRE Guide 2011 has been superseded by a 2022² edition (the BRE 2022 Guide) which has significantly altered the assessment of daylight and sunlight within new developments. The appellant submitted a revised DSA³ based on the BRE 2022 Guide which the Council has had the opportunity to respond to.

Main Issue

3. The main issue is whether the proposal would comply with the relevant requirements of Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) in terms of previous use and adequate natural light in all habitable rooms.

Reasons

Previous Use

4. Class MA 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 E

¹ Daylight/Sunlight Report, 7 January 2022, Daylight Sunlight Consulting Ltd

² Site Layout Planning for Daylight and Sunlight: A guide to good practice, BRE, 2022

³ Kelvin House, Worsley Bridge Road, SE26 5BE – Daylight and sunlight matters, 30 November 2022, Daylight Sunlight Consulting Ltd

- (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.
5. Under paragraph MA.1.(1)(b) development is not permitted unless the use of the building fell within one or more of the classes specified, for a continuous period of at least 2 years prior to the date of the application for prior approval. Such uses include those in B1 (business) use in the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) as it had effect before 1st September 2020 and uses in Class E (since 1 September 2020).
 6. Based on the submitted evidence and my site visit observations, it appears that the upper two floors of the building are in residential use. This follows the granting of prior approval by the Council in 2014⁴. That the upper two floors are in residential use, and have been for more than two years, is not in dispute between the main parties.
 7. The appeal scheme relates to the proposed change of use of the ground floor of the building. The appellant states that the ground floor remained in commercial use under what was then Use Class B1(c), and since September 2020, Use Class E(g)(iii).
 8. The Council submits that the building has been in a mix of B1 and C3 use during the two years prior to the date of the prior approval application. As a C3 use is not one of the classes specified within paragraph MA.1.(2), the development would not be permitted by Class MA, as it would not satisfy the requirements of paragraph MA.1.(1)(b).
 9. Article 2(1) of the GPDO defines a building as any structure or erection and includes any part of a building. The appellant has referred to a case⁵ which they contend supports their position that only the ground floor of the building should be taken account of. This case involved a different part of the GPDO and was considering the relevant size restrictions. The judgement concluded that the applicable size restrictions in the GPDO relating to a change of use can apply to only part of a building, including only to that part of the building changing use.
 10. The upper floors appear to be occupied for different and unrelated purposes to the ground floor of the building. Based on the submitted plans, the ground floor has no functional or physical link with the upper floors, other than that the entrances and stairs to the residential accommodation on the upper floors is accessed at ground floor level. The shared entrances do not, as a matter of fact and degree, change the separate nature of the ground and upper floor uses.
 11. Based on the evidence before me, and strictly for the purposes of this appeal, I find that the ground floor is a separate planning unit, including in relation to uses on the upper floors. On this basis and taking account of the definition of a building in article 2(1) of the GPDO, I therefore conclude that the proposal would be within Class MA of Schedule 2, Part 3 of the GPDO.

Natural Light

12. Development under Class MA is permitted subject to a number of conditions, including that the developer must apply to the local planning authority for a

⁴ Reference DC/14/088645

⁵ Mansell v Tonbridge & Malling BC [2017] EWCA Civ 1314

determination as to whether prior approval is required in relation to the matters set out in paragraph MA.2(2). Paragraph MA.2(2)(f) relates to the provision of adequate natural light in all habitable rooms. Paragraph W(2A) of Schedule 2, Part 3 of the GPDO states that the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.

13. The studios would comprise an open plan living/dining/kitchen/sleeping area with a separate bathroom. In a number of the studios, the sleeping area would be provided in a mezzanine level. Each unit would be served by at least one window.
14. The appellant's revised DSA uses the Illuminance Method described in the BRE 2022 Guide to assess levels of daylight to the studios. The revised DSA basis its assessment on achieving the target lux levels in the UK National Annex. Given that the proposal involves the conversion of a building, this is a reasonable approach. On this basis, the revised DSA sets out that the minimum recommendations for habitable rooms are achieved when the following lux target levels are obtained over at least 50% of the room's space, for at least 50% of daylight hours: bedroom 100 lux; living room 150 lux; kitchen 200 lux.
15. The BRE 2022 Guide advises that where a room has a shared use, which is the case here, the highest target should apply. It gives an example where the target for a living room could be used for a combined living/dining/kitchen area if the kitchens are not treated as habitable spaces. The revised DSA has taken the approach of this example and uses the target level for living rooms rather than kitchens. On this basis, the revised DSA concludes that the proposal would satisfy the BRE 2022 Guide in terms of daylight for all 27 rooms, which includes the mezzanine levels.
16. For sunlight, the recommendation is that a space should receive a minimum of 1.5 hours of direct sunlight. The revised DSA has based its assessment on this figure and has used the assessment date of 21 March which is in line with the recommendations in the BRE 2022 Guide. The BRE 2022 Guide advises that for dwellings, at least one habitable room, preferably a main living room, should meet at least the minimum criterion.
17. The revised DSA concludes that all but two of the rooms, R9 and R10 which are main living areas, would satisfy the criterion for sunlight. These two rooms would receive no hours of direct sunlight on the assessment date of 21 March. These rooms would be north facing and so I acknowledge that they would be unlikely to meet the recommended sunlight criteria. However, both would have a daylight adherence well in excess of the 50% room space target.
18. The provision of adequate natural light is not defined in the GPDO. Determining whether a development would provide adequate natural light to all habitable rooms is a matter of planning judgement. In the exercise of that judgement, the BRE 2022 Guide provides valuable guidance, although I am mindful that it is intended to be applied flexibly, particularly in urban areas.
19. The assessment in the revised DSA demonstrates that there would be near compliance with the recommendations of the BRE 2022 Guide, with just two north facing studios failing to meet the criteria for direct sunlight but which would exceed the target used for daylight. In my view, on the basis of the

assumptions used in the revised DSA, I am not persuaded that adequate natural light to all habitable rooms would not be provided.

20. However, I have concerns about the method in the revised DSA of discounting kitchens as habitable spaces and therefore reliance on the target of 150 lux for living rooms. While my attention has not been drawn to any local definition of habitable rooms, I am mindful of the definition in the GPDO⁶, which is 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. In this case, the kitchens would be physically part of the one living space in all the studios and would not therefore be a room solely used for cooking purposes.
21. In my judgement therefore, the removal of kitchens as a habitable space would not be appropriate. People spend long periods of time in kitchen areas and there is no reasonable justification as to why such areas should be afforded poor levels of natural light. I acknowledge the example in the BRE Guide 2022 regarding shared space as set out above. However, in my view, this does not mean that such an approach will be appropriate in all cases. No reasonable explanation has been given as to why kitchens have been discounted in this case, particularly as studio flats are proposed.
22. The revised DSA appears to provide information on the room area that would meet the target lux figure of 150 lux, but not the 200 lux which applies to kitchens. In the absence of a robust justification as to why kitchens should not be considered as habitable space, the submitted evidence does not provide sufficient information for me to reach a balanced conclusion on whether the proposal would provide adequate natural light to all habitable rooms.
23. The appellant has referred to two examples of approved development within the borough which did not fully adhere to the BRE Guide 2011, and which it is suggested had similar or worse results than the appeal proposal. These examples acknowledge the point that I have above, that the guidance should be applied flexibly. However, I have determined this appeal on its individual merits and have formed my own judgement in terms of whether there would be adequate natural light to habitable rooms in respect of the appeal proposal.
24. I therefore conclude that insufficient information has been provided to establish whether the proposal would provide adequate natural light in all habitable rooms of the dwellinghouses. The proposal would therefore not accord with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA of the GPDO.

Conclusion

25. I conclude that the proposal would fall within the provisions of Class MA, Part 3, Schedule 2 of the GPDO. However, it has not been demonstrated that the proposal would provide adequate natural light in all habitable rooms of the dwellinghouses. I therefore conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR

⁶ Paragraph X of Part 3 of Schedule 2 of the GPDO