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# Appeal Decision

Site visit made on 2 December 2022

**by K Savage BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 January 2023**

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**Appeal Ref: APP/G5180/W/22/3296938**

**15 Wickham Road, Beckenham BR3 5JS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Keith Jeffcoat (Vertex IT) against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/21/05559/RESPA, dated 1 December 2021, was refused by notice dated 25 January 2022.
  - The development proposed is change of use from Class B1(a) offices to Class C3 (dwellinghouses) to form 4 flats (1 x 2 bed and 3 x 1 bed) with associated car parking, cycle storage and refuse provision.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the description of development from the decision notice/appeal form, as I note a revised description was agreed by the parties during the course of the application. However, I have omitted superfluous wording which relates to procedural matters and not specifically to an act of development.
3. Schedule 2, Part 3 Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to the change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) to a use falling within Class C3 (dwelling houses) subject to a number of conditions and limitations. These include matters set out in Paragraph O.2(1) which require the prior approval of the local planning authority.
4. In 2020, Class B1(a) was replaced by a new Class E<sup>1</sup>, with Class MA introduced in respect of the change of use of premises from Class E to dwellinghouses. However, under transitional arrangements set out under Paragraph O.2(2)(b) of the GPDO, an application for prior approval in respect of Class O can still be determined if it was made before 31 July 2021.
5. It is a matter of dispute between the parties as to whether the proposal can be considered under Class O, having regard to the transitional arrangements, with the appellant further arguing that the proposal should have alternatively been considered under Class MA.

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<sup>1</sup> Under The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations)

## Main Issues

6. Given this context, the first main issue is whether the proposal would be permitted development under the provisions of the GPDO. If so, the second main issue would be whether the proposal would be acceptable in respect of the relevant prior approval matters.

## Reasons

### *Whether permitted development*

7. With the aforementioned changes to the GPDO, Paragraph O.2.(2)(b) specifies that development under Class O is permitted subject to the developer applying for a determination of prior approval matters on or before 31 July 2021. This aligns with Paragraph MA.2(3) of Class MA, which sets out that an application under that class may not be made before 1 August 2021. In effect, these are the dates when Class O gave way to Class MA as the effective class for any new applications seeking to change offices to dwellinghouses.
8. The application in this case was made on 1 December 2021, on a form specifying the change of use sought was that under Class O. This date is clearly after the 31 July 2021 deadline of Paragraph O.2.(2)(b) for new applications to be made under Class O. Therefore, it follows that the proposal cannot benefit from permitted development under Class O.
9. I note the appellant's reference to Article 3(2) of the 2020 Regulations in terms of transitional arrangements and interpretation of use classes. However, Article 3(1) makes clear that these arrangements apply during the 'material period', which is defined in Article 1(3) as the period beginning with 1 September 2020 and ending with 31 July 2021. As such, I do not regard these provisions as relevant to an application made outside of this specific period.
10. The appellant further argues that, at the time the application was made, there was no application form on the Planning Portal specifically for Class MA, and therefore a Class O form was used. The appellant further contends that the Council should have considered the proposal under Class MA, as Article 7 of the 2020 Regulations states that, on or after 1 September 2020, buildings falling within Class B1 should be treated as being within Class E.
11. I have no evidence that an application form for Class MA was not available at the time of the application. I note the appellant's reference to case law in *Murrell*<sup>2</sup> where it was held that an application does not need to be in any particular form and does not need to be accompanied by anything more than what is prescribed by the GPDO. However, given that the information required under Classes O and MA differs, in particular with respect to the prior approval matters, it seems to me that the class specified on the application form is fundamental to defining the application made and the information subsequently required to be submitted, and is not a matter open to interpretation by the Council. In this respect, I agree with the Council that the judgement in *Murrell* does not require or enable a local planning authority to assume an application expressly made under one class was in fact made under another.
12. Had the appellant actually been seeking a determination under Class MA, it was open to them to make this clear in an alternative application form or covering

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<sup>2</sup> *Murrell v Secretary of State for Communities and Local Government* [2010] EWCA Civ 1367

letter, but I have no evidence of such. Indeed, the appeal form continues to specify development is sought under Class O. For these reasons, I am not persuaded that the application was in fact made under Class MA, or should have been determined as such.

13. However, even if I were to accept the appellant's position, Paragraph MA.1.(a) states that development is not permitted unless 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. On site, I saw that the building was still occupied and in use as offices, and I have no evidence to suggest there was a period of vacancy in the three months immediately prior to the application for prior approval. Indeed, despite the appellant arguing that the application was effectively made under Class MA and should have been considered as such by the Council, no specific evidence has been advanced to demonstrate compliance with the limitations set out under Paragraph MA.1, with the only analysis being in respect of the conditions under Paragraph MA.2. Therefore, on the evidence before me, I am not satisfied that the proposal would constitute permitted development under Class MA in the alternative to Class O.

*Prior approval matters*

14. Having reached these conclusions, it is not necessary to consider whether the proposal would be acceptable in respect of the prior approval matters under Class O, or Class MA, as this would have no bearing on the outcome of the appeal. This is the case even acknowledging the Council's concession of its second reason for refusal relating to the floorspace of the proposed flats.

**Other Matters**

15. I have had regard to various other matters raised by interested parties in representations. However, for the same reasons as above, consideration of these matters would not alter my findings or the outcome of the appeal. Therefore, it is not necessary to address them further.

**Conclusion**

16. For the reasons set out, the appeal should be dismissed.

*K Savage*

INSPECTOR