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# Appeal Decision

Site visit made on 17 January 2023

**by A Tucker BA (Hons) IHBC**

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

**Decision date: 25 January 2023**

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**Appeal Ref: APP/X1165/W/22/3301094**

**St Georges, Bellrock Close, Torquay, TQ2 8SD**

- 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 Gilstone Partnership against the decision of Torbay Council.
  - The application Ref P/2022/0345, dated 28 February 2022, was refused by notice dated 18 May 2022.
  - The development proposed is change of use from office to dwelling.
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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 change of use from office to dwelling at St Georges, Bellrock Close, Torquay, TQ2 8SD in accordance with the application Ref P/2022/0345 made on 28 February 2022, and the details submitted with it including plan Nos 1614 Block Plan, 1614/51, 1614/52, 1614/53 and P-2022-0345-3, pursuant to Article 3(1) and Schedule 2, Part 3, Class MA, paragraph MA.2.

## Applications for costs

2. An application for costs was made by Gilstone Partnership against Torbay Council. This application is the subject of a separate decision.

## Preliminary Matters

3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), under Article 3(1) and Schedule 2, Part 3, Class MA, require the local planning authority to assess the proposed development solely on the basis of matters set out at paragraph MA.2. (2) of the GPDO. My determination of the appeal has been made on the same basis.

## Main Issues

4. The main issues are
  - a) whether the transport impacts of the development would be acceptable, and
  - b) whether the impacts of noise from commercial premises on the intended occupiers of the development would be acceptable.

## Reasons

### *Transport impacts*

5. The submitted drawings show an existing parking space for one car. The Council is concerned that this could be used by the flat above or the workshop below, and therefore cannot be relied upon for the proposed flat. The Council refers to compliance with the Torbay Local Plan, although a Policy is not referenced in its officer report or provided with the appeal submissions. In any case a prior approval should not be determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of permission by the GPDO.
6. In setting out its position the Council does not explain what concern it considers would arise should the parking space not be available to the future occupants of the flat. The proposal would create a flat in an urban area with good access to a wide range of services and facilities by means other than a private car. It is therefore not necessary to assume that future occupiers of the flat would rely on a private car to meet their day to day needs. Furthermore, the area would appear to be well served by unrestricted on street parking. The Council has made no specific comment relating to the availability of parking locally, and there does not appear to be any allocated parking for the other flats.
7. In summary, I am not satisfied that securing the use of the parking space for the occupiers of the proposed flat is essential. Accordingly, I find that the transport impacts of the proposal would be acceptable.

### *Noise impacts*

8. It would appear that the space underneath the proposed flat is little more than a storage area. It is accessed by a single metal door and is without any other openings. The drawings show that at the rear it is of a restricted height. The appellant states that it is currently used by the maintenance team who look after the rest of the development and is only accessed during day time hours. It is possible that the management of the development could change in the future and the space put to a different use, however it is unlikely that a significant operation could take place in such a modest space and the appellant confirms that the floors are concrete which would limit sound transmission from this basement level to the flat above.
9. In summary, I find that the impacts of noise from commercial premises on the intended occupiers of the development would be acceptable.

## Conditions

10. The Council has not suggested any conditions. The GPDO imposes conditions on permissions granted under Class MA that include a requirement that the development must be completed within a period of 3 years starting with the prior approval date, and the dwelling is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 of 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. I do not consider it necessary to impose any further conditions.

**Conclusion**

11. For the reasons above, I conclude that the appeal should be allowed and prior approval is deemed to be granted.

*A Tucker*

INSPECTOR