



Appeal Decision

Site visit made on 19 April 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/U5360/W/22/3302802

1 Chapel Place, Rivington Street, London, EC2A 3DQ

- 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) Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Ron Farmer of Rivington Properties against the decision of the London Borough of Hackney.
 - The application Ref 2022/0244, dated 29 January 2022, was refused by notice dated 12 April 2022.
 - The development proposed is Prior Approval (Class MA) for a change of use from office (Class E) to a one bedroom flat (Class C3).
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Decision

1. The appeal is allowed, and planning permission is granted for Prior Approval under Article 3(1) Schedule 2, Part 3, Class MA for a change of use from office (Class E) to a one bedroom flat (Class C3) at 1 Chapel Place, London, EC2A 3DQ in accordance with the terms of the application, Ref 2022/0244, dated 29 January 2022, subject to the following condition:
 - 1) The building envelope shall be adapted so as to provide sound attenuation against external noise, with windows shut and other means of ventilation provided of not less than the following dB(A) levels:

Living room and bedroom: 35 dB LAeq (07.00 to 23.00)

Bedroom: 30 dB LAeq (23.00 to 07.00)

The sound attenuation works shall be completed before the dwelling is occupied and shall be retained thereafter.

Preliminary Matters

2. The Council's first refusal reason refers to the building abutting a Grade 2 Listed Chapel (9 Chapel Place). The correct address for the listed chapel is 6 Chapel Place.
3. The appellant has submitted a revised first floor plan to include a walk-in wardrobe to address concerns raised in the Council's second refusal reason on natural light. As the proposal relates to a change of use rather than to an express internal layout, I consider that this amended plan can be accepted without prejudice to any interested party in keeping with the Wheatcroft Principles established in *Bernard Wheatcroft Ltd v SSE* (JPL 1982 page 37).

4. Class MA enables development consisting of a 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 to be permitted development subject to limitations set in MA.1 and to conditions set in MA.2. The parties concur that limitation MA.1.(1)(a) is satisfied in 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.
5. The Council contends that the proposal fails limitation MA.1.(1)(d)(ii) in that land within the curtilage of the building is or forms part of a listed building or land within its curtilage. The Council also contends that condition MA.2.(2)(f) is not satisfied requiring the provision of adequate natural light in all habitable rooms of the dwellinghouse.

Main Issues

6. The main issues therefore are
 - (a) whether the site lies within a building that directly abuts or fixes on to a listed building and
 - (b) whether the proposed change of use to a dwellinghouse would benefit from adequate natural light in all habitable rooms.

Reasons

Listed building

7. The listed building is a former Congregational Chapel located centrally between Old Street and Rivington Street within the centre of a courtyard around which are various buildings that now form Chapel Place. The courtyard does not completely surround the former chapel; there is another building that abuts its south-eastern corner. This in turn abuts the appeal building, 1 Chapel Place, which does not form part of the courtyard but has its own access from Rivington Street.
8. The Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 treats as part of the listed building "*any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948*". Historic England Advice Note 10 (Listed Buildings and Curtilage (2018) states that "*in general, a structure attached to a building, such as adjoining buildings or walls, will also be covered by the listing if the structure was ancillary to the principal building at the date of listing*".
9. The chapel was listed in 1975. The appellant's research documents show the chapel on an OS map dated 1872 with a terrace named Wright's Buildings to the east. The present appeal building can be seen on a later OS map dated 1894 following the redevelopment of Wright's Buildings. There was no physical link between the appeal building and the chapel at that time. An infill building providing a link to the building adjacent to the appeal site can be seen on an OS map dated 1952. The adjacent intervening building does not form part of the appeal site. The appeal site is visually and physically separate from the listed chapel.

10. Historic land use records show that the appeal site was originally used as a workshop. The historic use was separate to and independent from the ecclesiastical use of the chapel. All buildings in Chapel Place are now in commercial use, but there is no evidence before me to indicate any subsequent functional relationship between the appeal site and the former chapel up to the time of the listing.
11. My findings are that the appeal building is not “*ancillary*” to the listed chapel in relation to its physical layout, its visual appearance, or its historic use. The presence of an intervening building that now provides a physical link does not change this. The site therefore does not fulfil the statutory criteria for a structure falling within the curtilage of a listed building.
12. As such, the proposal satisfies the limitation at MA.1.(1)(d)(ii) in that the appeal building does not form part of a listed building or land within its curtilage. The proposed change of use to a flat therefore is permitted development subject to a determination as to whether prior approval is required in relation to the conditions listed in MA.2.

Natural light

13. The proposal relates to rooms at first and second floor level accessed via a staircase leading to a ground floor entrance. The accommodation is single aspect west facing. There are 3 windows at second floor level and 2 at first floor level with one of these serving the staircase. The Council’s concerns relate to adequate natural light being received to a habitable room served by the one remaining first floor window.
14. The window is large, about 1.7m high and 1.3m wide. It is reflective of the historic industrial use of the premises for admission of natural light, but there are current constraints to the passage of light. The window faces another 3-storey building across a narrow courtyard. The courtyard is also enclosed by a linking building just to the north of the first-floor window.
15. At the time of my site visit the end of the first-floor room farthest from the window had a kitchenette; this was dark due to the presence of high fixtures which would be removed to provide a large bedroom. Light was also being restricted by scaffolding screened by plastic sheeting erected around the facing building and so reducing the effective width of the courtyard. This temporary measure that would not affect light to the proposed flat in the long-term.
16. The room is long, some 5m in length but shallow in depth. The farthest part of the room from the window is where the walk-in wardrobe is proposed. My impression at the site visit was that the one window would provide adequate natural light for most of the room to serve as a bedroom.
17. The appellant has submitted a Daylight Analysis (Rook – May 2022). This confirms that the room would satisfy the average daylight factor for a bedroom set by the Building Research Establishment publication BR209 Site layout and planning for daylight and sunlight (2011) (BRE Guide). The proximity of other buildings reduces the vertical sky component in the calculation compared with that for the second-floor windows to be used as a living room. Nonetheless, the bedroom achieves a satisfactory average daylight factor and would meet the criteria used in the BRE Guide for the depth of rooms illuminated from windows in only one wall.

18. The appellant has also referred to the Mayor of London's Supplementary Planning Guidance for Housing (2016); this recommends that the BRE Guide should be applied sensitively to higher density development in London, particularly in central and urban areas. The site is located within a high density urban area.
19. The term "*adequate natural light*" is not further defined in the GDPO. But having regard to the evidence before me and to my site visit, my judgement is that the first-floor habitable room to the proposed dwellinghouse would receive adequate natural light.
20. There is no disagreement between the parties that the proposal would not satisfy the other conditions listed in MA.2.

Conditions

21. The GDPO at Paragraph (5) and (6) to MA.2 confirms that development is permitted subject to the following conditions:
 - (5) Development must be completed within a period of 3 years starting with the prior approval date.
 - (6) 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.
22. The provisions of Paragraph W(13) (prior approval) of this Part to the GDPO enable prior approval to be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested a condition should be applied in relation to sound insulation. As the site is located within a predominantly commercial location, I think it reasonable to also include a suitable planning condition to cover this.

Conclusion

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

Rory MacLeod

INSPECTOR