
Appeal Decision

Site visit made on 25 April 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2023

Appeal Ref: APP/P2114/W/22/3295672

51 St. John's Wood Road, Ryde PO33 1HL

- 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 Ms Karrie Mellor against the decision of Isle of Wight Council.
 - The application Ref 22/00179/3OPA, dated 31 January 2022, was refused by notice dated 24 March 2022.
 - The development proposed is described as the 'change of use from offices (Class E) to 4 dwellings'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was for prior approval under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The Council's decision notice described the proposal as 'prior approval for alterations of offices to form 4 residential dwellings. Since Class MA refers to development consisting of a change of use, the description given on the application form, which I have used in the banner heading above, accurately describes the proposed development.

Background and Main Issues

3. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses) ¹.
4. The Council contends that the application did not comply with the requirements of Paragraph MA.2(2), since physical alterations associated with the proposed use of the building as four dwellings were already underway at the time of the application. On that basis, the Council considers that the proposal would not be permitted development as defined in the GPDO. The reason for refusal also alleged harm to the highway network by virtue of a lack of safe site access and inadequate parking provision, as well as there being a flood risk to the occupants of the building.
5. I consider the main issue to be whether the proposal would be permitted development under Class MA of the GPDO, with particular reference to whether

¹ As defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)

the development has begun in advance of prior approval being sought and obtained.

Reasons

Whether the proposal would be permitted development

6. The appeal site comprises a two storey building set back behind the street frontage. It is referred to in the evidence as having most recently been used as offices (Class E).
7. Paragraph MA.2 of the GPDO sets out several conditions which must be satisfied in order for development to be permitted under Class MA. They include in Paragraph MA.2(2) that 'Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required', going on to list a series of defined prior approval matters.
8. Paragraph W(11) of Schedule 2, Part 3 of the GPDO further requires that development under Class MA must not begin before the occurrence of one of the following – (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant. None of the requirements (a) to (c) have been satisfied at the time of my considering this appeal.
9. The Council's Officer Report states that a site visit in February 2022 evidenced that works to the building had commenced prior to the application being submitted. Little detail has been provided as to the scope and extent of the works which were observed at that point, although evidence from both parties refers to internal works having been carried out. Although the appellant disagrees that internal works are capable of comprising development for purposes of Class MA, I have been presented with no compelling evidence disputing that such works had, as a matter of fact, commenced prior to the application being made.
10. At the time of my site visit, there was evidence of part-completed construction works, including scaffolding around part of the building. I noted that replacement windows have been fitted and alterations have been made to the layout of window and door openings, although these differ in some respects from those shown on the application drawings.
11. Internally, walls have been realigned to form four separate units of accommodation, each with its own front door. Each unit contains a range of internal fittings with a clearly domestic character. Although these vary in extent and degree of completion, they include kitchen units, bathroom fittings, domestic appliances and items of domestic furniture. One of the ground floor units was furnished with a double bed, sofa, kitchen table and a variety of small decorative items such as lamps, pictures and cushions. The whole building has been decorated to a high standard, consistent with the intended residential use.

12. Notwithstanding the above, there was no indication at the time of my site visit that any of the four units were occupied. Some of the units were not yet fully furnished or fitted with domestic appliances. Even in the most completely fitted out unit, the kitchen appliances appeared unused and storage cupboards were empty.
13. Whilst some internal alterations are exempt from the definition of development under Section 55(2) of the Town and Country Planning Act 1990 (The Act), internal alterations can nevertheless be indicative of whether development consisting of a proposed change of use has commenced. The Courts have held² that it is relevant to have regard both to any physical works of conversion (including internal works) and also to the actual use. Both are important, but neither is individually decisive. The Courts have also held³ that the distinctive characteristic of a dwellinghouse is its ability to afford those who use it the facilities required for day to day private domestic existence.
14. While I acknowledge that none of the four units of accommodation were occupied for residential purposes at the time of my site visit, they were readily capable of such occupation with little or no further alteration. One of the four units already provided all the facilities required for private domestic existence and could feasibly be marketed as such in its current condition. The other three units required minimal further alteration to reach the same state.
15. Furthermore, as a result of the works which have been carried out, the internal accommodation no longer displays characteristics typical of office use. In particular, the kitchens and bathrooms are of a clearly domestic scale and character, occupying a significantly higher proportion of the floorspace than would be required for ongoing office use. Therefore, further alterations would be required in order to return the accommodation to office use, indicating that development comprising a material change of use has in fact already occurred.
16. In the Battersea appeal decision⁴ provided by the Council, a similar range of internal alterations was concluded to be evidence that a material change of use had occurred. I have also had regard to the Stockport appeal decision⁵ provided by the appellant. However, the proposed development in that case fell within a different Class of the GPDO and the key issue was whether the proposed change of use had been completed, rather than commenced. Therefore, the circumstances are not applicable to the appeal proposal and do not change the conclusions I have reached above.
17. For the reasons given above, I find that, as a result of the internal alterations undertaken, the proposed development comprising a material change of use from Office (Class E) to dwellings (Class C3) has commenced without complying with the conditions set out in Paragraphs MA.2(2) and W(11) of the GPDO. I therefore conclude that the proposal would not constitute permitted development within the scope of Class MA of the GPDO.

Other Matters

18. The prior approval considerations listed in GPDO Paragraph MA.2 are only relevant where the proposal is otherwise permitted development. Having

² Impey v SSE & Lake District SPB [1981] JPL 363, [1984] 47 P&CR 157 and Backer v SSE [1983] JPL 167

³ Gravesham BC v SSE & O'Brien [1983] JPL 306

⁴ Appeal Ref APP/H5960/W/20/3263123

⁵ Appeal Ref APP/C4235/W/19/3238538

concluded that the development before me is not permitted development, it is neither necessary nor appropriate for me to go on to consider other issues raised by the Council, in relation to the transport impacts of the development or flooding risks in relation to the building.

Conclusion

19. For the reasons given above, the appeal is dismissed.

Jane Smith

INSPECTOR