



Appeal Decision

Site visit made on 18 April 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/P4415/W/22/3307783

Cafe Sport, 11 Station Street, Swinton, Mexborough, South Yorkshire S64 8PZ

- 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 M Armstrong of Lexgreen Services Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2022/0166, dated 28 January 2022, was refused by notice dated 30 March 2022.
 - The development proposed is described as 'Prior Approval Application – Class E to Class C3'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development has been taken from the original planning application's supporting statement and referenced on the application form.

Background and Main Issues

3. 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 GPDO) provides for a permitted development right for the change of use of a building falling within use class E (Commercial, Business and Service) to class C3 (dwellinghouses). This is subject to limitations and conditions, as set out in subsequent paragraphs of Class MA.
4. The appeal site consists of a detached two-storey building formerly known as Café Sport which sits near to Swinton Town Centre. Prior approval was refused by the Council on the grounds that the proposal failed to demonstrate that the building is within use class E of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) as required by Class MA.
5. Furthermore, Paragraph MA.2(2) requires that where any development under Class MA is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for its prior approval subject to a number of matters. Although not raised as a reason for refusal concern has been raised in the Officer's Report and Council's Appeal Statement within the context of paragraph MA.2(2)(f), that the proposal would not meet the condition that

requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. I am mindful of this concern, and the need to consider it in the appeal. The appellant has had opportunity to comment on this during the appeal and I do not consider that they would be prejudice by its inclusion.

6. For the above reasons the main issues are:

- whether the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO; and
- if so, whether prior approval should be granted with regard to the requirement for the provision of adequate natural light.

Reasons

Whether Class MA

7. Under paragraph MA.1 development is not permitted by Class MA unless various criteria are met. Apart from paragraph MA.1(1)(b), it is not disputed that all of the other criteria in MA.1 would be met by the proposed development, and I have no basis to consider differently. Under paragraph MA.1(1)(b) development is not permitted unless the use of the building falls 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. The specified classes include those uses in class E of the UCO.
8. The appellant claims that the appeal building use is class E, falling primarily into class E b) and class E d). These include 'the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises' and 'indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public' respectively.
9. The planning history; Report and Valuation completed by John D Wood dated September 2019; the inventory of fixtures and fittings dated 2016, the undated and unreferenced photographs; the Valuation Office Agency 2017 valuation report, and the existing drawings of the appeal building, all support the argument that the building's principal use was indoor sport, recreation and fitness related.
10. The building has suffered flood damage and consequently internal fixtures and fittings have been removed. However, various documents detailing the interior confirms the building had a reception area and ground floor gym with changing facilities. Indoor sports use at first floor level also existed in the form of further gym facilities and pool and snooker use. While the building had its own bar and dining area, areas for screening televised sports events and function rooms at first floor these are not incompatible with a primarily leisure and sport type club.
11. Externally there are limited features to suggest the building could not be a leisure/sport type club. A remaining advertising board to the side of the building does refers to the building as a 'free house' but also details that it is a fitness centre offering separate changing facilities, saunas, sunbeds and fitness classes. Similarly, the external seating area does not infer a specific type of use as it is a feature that is typical of premises that offer food and drink.

12. Consequently, when taken together the building's principal permitted use is class E with other features such as the bar, dining area, television areas and function rooms ancillary to this.
13. It is not disputed by the parties that the building has been used more recently as a drinking establishment rather than a leisure/sport type club as highlighted in some of the available social media pages. However, this has been confirmed as a short-term situation with no formal planning permission for either a permanent or temporary change of use for this purpose. It therefore does not change my view that the appeal building's planning use remains as class E.
14. For the above reasons, I find that the requirements of MA.1(1)(b) are met and the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA subject to the relevant conditions which I shall now come onto.

Adequate Natural Light

15. Condition MA.2(2)(f) of Class MA requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. As shown on the existing building's drawings and, as I observed on site, there are insufficient existing windows to meet this requirement. To mitigate for this, the proposal includes a significant number of new windows to be installed as shown on the proposed building's drawings. While it is evident that all the habitable rooms would be provided with windows, little evidence that these would provide adequate natural light into the rooms has been provided. Notwithstanding this, it is noted that Class MA does not permit building operations to facilitate the change of use.
16. It is argued that Class MA does not stipulate that granting of permitted development rights should fail if building operations are required and the installation of the windows could be secured through a separate planning application or through a planning condition.
17. While this is noted, the inclusion of specific conditions such as MA.2(2)(f) in Class MA is to ensure that satisfactory measures are in place through the permitted development right to control development impacts and protect amenity. Therefore, permitting a change of use through Class MA is directly reliant on the proposal complying with the conditions specified therein. It therefore follows that sufficient information to give confidence that the proposal would comply with these conditions, including that they can be implemented, is an essential part of ensuring certainty in the process of granting prior approval.
18. On this basis I am not persuaded that reliance on a separate planning application, which has not at this time been submitted, is reasonable or appropriate. This is particularly relevant in this case as the Council has raised concerns regarding some of the proposed windows causing increased overlooking of neighbouring properties and some providing limited outlooks and poor levels of natural light. No evidence to counter these concerns has been presented. Consequently, there is little certainty that the appellant would be able to agree the installation of the windows through a separate planning application with the Council. Similarly, due to this uncertainty, I do not consider a planning condition to be appropriate as it would be unable to satisfy

the reasonable and precise elements of the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework).

19. Reference is made to an example where a separate planning application for window installation was used to secure adequate natural light and to other examples detailed in an internet blog about Class MA of the GPDO. These examples include 3 Teignmouth Parade, 4 Grimsdells Corner and Sunset Court. While these consider a variety of matters related to Class MA, I have only considered the elements relevant to the proposal in this appeal.
20. With regard to 4 Grimsdells Corner and Sunset Court, these are not comparable to the proposal as, in contrast, no concerns were raised regarding the adequacy of natural light and the living conditions of neighbours. With respect to 3 Teignmouth Parade, this was refused on the basis that adequate natural light to all habitable rooms was not sufficiently demonstrated. This is consistent with the proposal before me and supports my view on this appeal. Overall, the examples do not change my view that in this case reliance on the use of a separate planning application to address this issue is not a satisfactory or appropriate method to permit development.
21. There is therefore no certainty through this appeal that windows needed to provide adequate natural light would be installed to satisfactorily meet the relevant permitted development condition.
22. For the above reasons, I conclude on this issue that the proposal would not provide adequate natural light in all habitable rooms of the dwellinghouses and would not accord with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA.

Conclusion

23. While the proposal would fall within the provisions of Class MA, Part 3, Schedule 2 of the GPDO, it has not been demonstrated that it would provide adequate natural light in all habitable rooms of the dwellinghouses in accordance with condition MA.2(2)(f). As such the proposal would not be permitted development.
24. For the reasons given above, I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR