



Appeal Decision

Site visit made on 16 May 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 JULY 2023

Appeal Ref: APP/Z5060/W/22/3304836

Rear Annex, 75 Longbridge Road, Barking, IG11 8TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Umar Hussain of the Smp Group against the decision of the Council for the London Borough of Barking and Dagenham Council.
 - The application Ref 22/00305/PRIMA, dated 23 February 2022, was refused by notice dated 20 April 2022.
 - The development proposed is described as *"When the Applicant purchased 75 Longbridge Road in late 2019, it was a Co-Op Funeral Directors on the ground floor and a self-contained Flat (residential) on the upper floors, accessed from the rear of the premises. The Flat had part of the rear yard as external amenity space. The Rear Annex was a part of the Funeral Directors, used as Office and Staff accommodation. The front of No 75 is now used under Class E – shops. The First Floor is retained as Residential, Class C3, still accessed from the rear and still with external amenity space. The Annex has been split off from the front shop unit and is now a separate, detached single storey, flat roofed, single person, one bedroom Residential Unit, with rear external amenity space for secure cycle storage, clothes drying and outside seating area and common access-way for both the first floor flat and the Annex, leading to the back lane to Faircross Avenue. The accommodation is 37m2 and comprises of a Kitchen / Living Room, a bedroom with dressing area and an En-Suite Shower Room with WC and WHB. There are no changes to windows or doors so the external appearance is exactly the same as the previous Use. The impact on the area and environment is minimal with the addition of 1no Habitable Unit, for 1no person. The access is the same, the building is the same only used primarily by one person for social hours whereas the building was previously used by more people, during normal working hours only. The risks are likely to be less because the building is more continually occupied, albeit by less people, but for a longer time frame."*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development cited in the planning application form differs to that contained within the decision notice and the appeal form. There is no evidence any change was formally agreed. For the purposes of the appeal and in the interest of clarity I rely upon the description on the application form for the purposes of the appeal as detailed in the heading above.

Background and Main Issues

3. Development permitted by Class MA of the GPDO, allows for 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).
4. The Council's reasons for refusing the application are that the residential use had commenced before the submission of the prior notification application and the requisite fee had not been paid, therefore prior approval cannot be granted as it falls outside the scope of Class MA. In view of the above, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

5. Under Schedule 2, Part 3, Class MA of the GPDO development is not permitted if, for a continuous period of at least 2 years prior to the date of the application for prior approval, the building was not in a specified use. The specified uses include those uses in Class B1 (prior to 1 September 2020) and Class E (since 1 September 2020) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). Both parties are in agreement that the historic use was as a funeral directors (Co-operative). However, where the parties are in conflict is whether the residential use applied for under the appeal scheme commenced prematurely.
6. Schedule 2, Part 3, Class MA.2(2) of the GPDO states '*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.*' As such, in order for the appeal scheme to benefit from prior approval the conversion of the property to residential use under Class MA cannot have occurred prior to the submission of the application.
7. The appellant submitted their application for prior approval, dated 23 February 2022 following an enforcement investigation that alleged the appeal site was in use as a residential dwelling. The appellant provides a solicitor's letter that states that they were instructed by their client that works to convert the annex from an office and staff room to a dwellinghouse was completed in January 2022, before the submission of the prior approval application. However, the appellant claims that whilst the appeal site was furnished as a 1 x bedroomed unit, the residential use had not commenced, such that the change of use has not taken place.
8. There is no dispute between the parties that the annex has been refurbished and is ready for residential accommodation. The information submitted, particularly the photos taken inside the premises by the appellants show several personal items within the unit and signs of habitation. During my site observations, whilst I was unable to gain access inside the property, there did appear to be evidence of habitation, with washing and other domestic paraphernalia located in the external yard area. Thus, prior approval cannot be granted for development that has already begun, whether it is wholly or partially completed. On the balance of probability and based on the evidence before me, it appears that the appeal site has been used for residential purposes already.

9. Even if the residential use has not commenced, the refurbishment of the annex to provide a separate residential unit from the main property at No 75 Longbridge Road, would prevent any use associated with the current Class E function at the main property. Thus, notwithstanding the commencement of the residential use, it has also not been demonstrated that the building was in Class E use for the two years preceding the date of application to the Council.
10. Overall, based on the evidence before me, I cannot reasonably come to any conclusion other than what the Council contends, that the residential use had commenced prior to the submission of the prior notification application. Consequently, the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO. Therefore, I find that the proposal would not be permitted development.
11. In regard to the fee, there is dispute between the parties as to whether or not a correct fee has been secured from the appellant. There is no clear evidence before me from either party in respect to this matter. Without a correct fee there are questions over the validity of the application. However, Section 79 (6) of the Town and Country Planning Act 1990 provides discretion to decline to determine an appeal or proceed with its determination if it emerges during the appeal process that planning permission could not have been granted by the Local Planning Authority. In any event, as I am dismissing the appeal as the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO, I do not need to consider this matter further, as no significant likely effects would arise from my decision.

Conclusion

12. For the reasons given above I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR