



Appeal Decision

Site visit made on 21 June 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2023

Appeal Ref: APP/V5570/W/22/3311013

7 Floral Place, Northampton Grove, Islington, London N1 2PL

- 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 Floral Place Partnership against the decision of London Borough of Islington.
 - The application Ref P2022/2336/PRA, dated 13 June 2022, was refused by notice dated 5 August 2022.
 - The development proposed is described as 'change of use from Class E to 3 x 1 bed self-contained flats. Please refer to accompanying drawings and Class MA Planning Letter for additional information'.
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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 the change of use from Class E to 3 x 1 bed self-contained flats at 7 Floral Place, Northampton Grove, Islington, London N1 2PL in accordance with application, Ref P2022/2336/PRA, made on 13 June 2022, , subject to the conditions identified in the attached Schedule.

Applications for costs

2. An application for costs was made by Floral Place Partnership against the London Borough of Islington. This application is the subject of a separate decision.

Preliminary Matters, Background and Main Issue

3. The description in the banner heading is taken from the planning application form. However, in my formal decision the description of development has been amended to omit the second sentence, which does not describe acts of development.
4. Class MA of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (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) of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.
5. Paragraph MA.1 sets out limitations on such permitted development rights. It includes (b), that the building fell within one or more of the classes specified in

sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. The sub-paragraph identifies the uses as Classes A1, A2, A3, B1, D1(a), D1(b) and D2(e) as it had effect before 1 September 2020, and on or after that date, Class E. The Council's first reason for refusal relates to this matter.

6. Further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject to a number of conditions which includes the requirement, at MA.2(2), that the developer must apply to the local planning authority for a determination as to whether prior approval is required as to a number of matters. Paragraph MA.2(2) (h) requires, where the development involves the loss of services provided by a registered nursery or a health centre maintained under section 2 or 3 of the National Health Service Act 2006, a determination as to whether prior approval is required as to the impact on the local provisions of the type of services lost. The Council's second reason for refusal relates to this matter.
7. The Council considers that the development complies with all other requirements, other than (b), of paragraph MA.1 and does not contest compliance with the requirements of Paragraph MA.2(2) other than (h). Based on the evidence before me, I see no reason to disagree.
8. Given the background to the appeal and the preliminary matters above, I consider 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 impact of the proposal on a local registered nursery provision.

Reasons

Whether within the provisions of Class MA

9. Floral Place comprises a former warehouse building and an attached former dwellinghouse, both of which have ground, first and mezzanine floors. The appeal relates to all floors of the former dwellinghouse only.
10. The Council consider that the entire former warehouse and former dwellinghouse form one planning unit due to the lack of self-containment. It considers that the consequence of this is that the building is in mixed use akin to a sui generis use and so does not benefit from the permitted development rights set out in Class MA.
11. Lease agreements provided within the appeal submissions show the tenant of the majority of the ground floor of the warehouse building as Bright Horizons Family Solutions Limited, a registered nursery. In addition, they show the tenant of the first and mezzanine floors of the warehouse and the whole of the former dwellinghouse as Family Futures Consortium Limited, an adoption agency.
12. I note that there is internal access between the nursery at ground floor and the adoption agency on the upper floors through the entrance adjacent to the former dwellinghouse. Furthermore, the adoption agency has access to the external play area of the nursery at the other end of the warehouse building.

The indication within the lease, however, is that such access is for emergency purposes only which supports a conclusion that the uses within the building are occupying physically separate areas.

13. Furthermore, there is no substantive evidence to demonstrate that the nursery and adoption agency uses are linked. The evidence suggests that they are operated by different companies and have different and unrelated purposes. I am therefore satisfied that the area occupied by the nursery and that of the adoption agency have a different primary use and are separate planning units. This view accords with the *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 judgement.
14. The Council suggest that in the absence of planning permission or a lawful development certificate for the use of the former dwellinghouse it has not been demonstrated that the existing use falls within Class E. The appellant's statement of case does not identify a planning permission or certificate of lawful use, that clearly establishes the lawful use of the appeal property falls within Class E. However, evidence is provided by the appellant, in the form of the leases, showing that the former dwellinghouse building was leased to the adoption agency between 2006 and 2021. Furthermore, no evidence has been provided by the Council that suggests the use of the appeal site as an adoption agency is unlawful. On the balance of probabilities, the use of the building for purposes falling within Class E does appear to be lawful. In reaching this conclusion I note that the appeal before me does not relate to a certificate of lawfulness, and my findings are based on the evidence before me.
15. My attention has been drawn to planning application reference 910035. I have not been provided with the full details, however I note within the appellant's case, which is not disputed by the Council, that it was a personal permission which ceased on 15 September 2006 at the latest when the adoption agency took over the lease. I am therefore satisfied that it is not relevant to establishing the existing lawful use of the appeal property, and does not demonstrate any interlinking of the uses.
16. 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 will address below.

Impact on a local registered nursery

17. Having concluded that the existing use of the appeal site is not sui generis and interlinked with the nursery, it follows that the proposed development would not result in the loss of a registered nursery. Accordingly, I conclude that prior approval is not required as to the matter referred to in paragraph MA.2(h) of the GPDO.

Other Matters

18. The site is located within the Canonbury Conservation Area (CA). Accordingly, the requirements of paragraph MA.2(e) of the GPDO are triggered. The Council has not objected to the proposal due to the impact of the proposed change of use on the character or sustainability of the conservation area. Based on the appeal proposals and my observations on site, and noting that the predominant

character of the CA is residential, I am satisfied that the proposal would preserve the character and appearance of the.

Conditions

19. Planning permission is granted for development under Schedule 2, Part 3, Class MA of the GDPO subject to conditions set out in paragraph MA.2 of that Class. At Paragraph MA.2(5) it specifies that the development must be completed within a period of 3 years starting with the date prior approval is granted. In addition, paragraph MA.2(6) specifies that 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 the UCO and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.
20. Furthermore, Part W(13) of the GPDO states that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matters. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against the advice in the National Planning Policy Framework and Planning Practice Guidance. As a result, I have made amendments where necessary for clarity, consistency and enforceability.
21. Given the conditions laid out above, I am not persuaded, from the evidence before me, that separate conditions to specify the time limit for development to be carried out and to specify use as a dwellinghouse within the meaning of Class C3 of the UCO would be necessary in this case. I have therefore not imposed them.
22. The Council's suggested condition in respect of plans is considered necessary for clarity.
23. Whilst there is limited site-specific information available regarding parking pressure, the appeal site nevertheless is located within a controlled parking zone. I note that DMP Policies DM8.5 and CS10 require all additional homes to be car-free. In that context, a condition requiring that the dwellings created be car-free is justified and necessary. I further note that the appellant does not dispute the appropriateness of such a condition. I have, however, amended the wording of the condition, taking into consideration the comments of the appellant, to ensure that the requirements relate to the use of land rather than seeking to control the actions of a person.
24. It is necessary to secure full details of a sound attenuation scheme to ensure that the development provides a satisfactory living environment for future residents, which is necessary before development commences.

Conclusion

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

Elaine Moulton

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 934-001 Location Plan;
 - 934-100 Proposed Site Plan;
 - 934-101 Rev 1 Proposed Ground Floor Plan;
 - 934-102 Rev 1 Proposed First Floor Plan;
 - 934-103 Proposed Mezzanine Floor Plan;
 - 934-110 Proposed South Elevation;
 - 934-110 Proposed North Elevation.
- 2) The development hereby permitted shall not be occupied until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
 - (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.
- 3) No development shall take place until full particulars and details of a scheme of sound attenuation works. The works shall be carried out prior to the first occupation of the development hereby approved, and maintained thereafter in accordance with the approved details.