



Appeal Decision

Site visit made on 1 August 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal Ref: APP/A0665/W/23/3317295

Frodsham Golf Club, Simons Lane, Frodsham, Cheshire West and Chester, WA6 6HE

- 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).
 - The appeal is made by Mr G Lloyd against the decision of Cheshire West and Chester Council.
 - The application Ref 22/04556/PMA, dated 8 December 2022, was refused by notice dated 2 February 2023.
 - The development proposed is application to determine if prior approval for a proposed change of use to residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Changes to the Town and Country Planning (General Permitted Development) (England) Order 2015¹ (hereafter the 'GPDO') introduced a new Class MA. Class MA permits the change of use of commercial, business and service uses, and any land within its curtilage, from a use falling within Class E of Schedule 2 of the Use Classes Order² to a use falling within Class C3 (dwellinghouse) of Schedule 1 of that Order.
3. Paragraph MA.1.(1) and (2) set out the requirements to qualify for permitted development under Class MA. These include 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, and the use of the building fell within classes A1, A2, A3, B1, D1(a), D1(b), D2(e) and E for a continuous period of at least two years prior to the date of the application. The cumulative floor space of the existing building changing use must not exceed 1,500 square metres. Paragraph W of the GPDO sets out the procedure for Part 3 prior approval applications.
4. The parties are in dispute as to whether the existing use of the building falls within Class E and unable to benefit from the permitted development rights under Part 3, Class MA. The Council also raises issues about whether the development falls within the definitional scope of Class MA.

¹ The Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021.

² The Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

5. The Courts³ have held that for any prior approval application the Local Planning Authority (and therefore me) are bound to consider and determine first of all whether the development otherwise falls within the definitional scope of the particular Class of permitted development.
6. Frodsham Golf Club eventually closed in 2021. Before then, attempts were made to diversify the site. Planning permission (LPA ref: 19/00684/FUL) was granted to change the former clubhouse to a children's nursery, which I saw was in use at the time of my visit.
7. In addition, planning permission (LPA ref: 19/00684/FUL) was also granted for change of use of the existing greenkeepers building (the building the subject of this appeal) into a new clubhouse and visitor centre. It was to accommodate a bar/restaurant, kitchen, reception and shop, teaching area and toilet facilities. Planning condition 4 was imposed and states "*The building shall be used as a clubhouse in association with the existing golf course and visitor centre only and for no other purpose without the prior approval of the Local Planning Authority.*" The reason for imposing the condition was "*In the interest of residential amenity in accordance with Policy SOC5 of the Cheshire West and Chester Local Plan (Part One) and in order for the Local Planning Authority to retain adequate control over future development at the site*". The building was converted, officially opened by the Mayor in the winter of 2019 and closed in March 2020.
8. Article 3(4) of the GPDO states that 'Nothing in this Order [the GPDO] permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act⁴ otherwise than by this Order.' In other words, if there is an existing condition restricting the existing land or buildings in some way, as in this case, then the development being considered under the GPDO cannot be permitted.
9. The fact the golf club has since closed does not mean the condition just falls away or fails to exist. No application has been sought to formally remove or vary the condition. Until the condition is removed, or another use is granted planning permission and implemented, it remains. Article 3(4) does not make any differentiation or stipulation about the nature or type of condition imposed or type of planning permission.
10. I concur with the Council that the condition referred to above is a condition to which Article 3(4) applies and which sufficiently restricts the use of the building such that a Class MA prior approval application cannot be determined on it, and that the building cannot, therefore, benefit from permitted development.
11. In light of the above and finding the proposed development falls outside the scope of the permitted development for Class MA, there is no need for me to go on and consider the existing use of the building and whether prior approval should be granted.
12. For the reasons above the appeal is dismissed.

K Stephens
INSPECTOR

³ *New World Payphone Ltd v Westminster City Council* [2019] EWCA Civ 2250 and *R (on the application of Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin).

⁴ The Town and Country Planning Act 1990