



Appeal Decision

Site visit made on 5 September 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Appeal Ref: APP/L5810/W/22/3311171

112-114 Whitton High Street, Twickenham Richmond TW2 7LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 RVP8 Ltd against the decision of Richmond Upon Thames London Borough Council.
- The application Ref 22/1769/GPD26, dated 6 June 2022, was refused by notice dated 25 July 2022. The development proposed is Part change of use of the ground floor of the building from commercial premises (Use Class E) to 2 residential apartments (Use Class C3).

Decision

1. The appeal is allowed and prior approval granted under the provisions of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for part change of use of the ground floor of the building from commercial premises (Use Class E) to 2 residential apartments (Use Class C3) at 112-114 Whitton High Street, Twickenham, Richmond TW2 7LN in accordance with the application Ref 22/1769/GPD26, dated 27 May 2022, and subject to the following conditions:
 - 1) The dwellings hereby approved shall not be occupied until the completion of works approved under planning permission 22/1756/FUL granted by Richmond Upon Thames London Borough Council on the 1 August 2022.
 - 2) The dwellings hereby approved shall not be occupied until the cycle storage facilities, as shown on 'Proposed Ground Floor – Drawing No./ Rev 101' have been provided. Thereafter, the approved cycle storage facilities shall be retained for the life of the development.

Background and Main Issue

2. The GPDO under Schedule 2, Part 3, Class MA, sets out that the following development is permitted: Development consisting of 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 Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order, subject to certain conditions and limitations.
3. Paragraph MA.2 of the GPDO indicates that Class MA development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for certain matters.

4. The Council has raised an issue with regard to prior approval matter: (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has not argued that the proposal fails to comply with Class MA in other respects, and I have no compelling reasons to find otherwise.
5. Accordingly, the main issue is whether the proposal benefits from the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO, with regard to the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

6. The prior approval application, which is the subject of this appeal was made with an accompanying full planning application Ref 22/1756/FUL. This full planning application was to secure planning permission for various alterations to the exterior of the property, including the enlargement of an existing window and the installation of a new window to ensure that the habitable rooms of the ground floor dwellings would receive adequate natural light.
7. The permitted development regulations under Class MA do not allow for these works and so these therefore require a separate full planning application. This application was effectively intended to support the prior approval application and be assessed in connection with the proposed change of use under the Prior Approval application.
8. The decision on the appellant's prior approval application was made on the 25 July 2022, prior to the determination of planning application Ref 22/1756/FUL, which was subsequently granted on 1 August 2022.
9. The national Planning Practice Guidance indicates that developers will need to consider whether physical works required to implement a change of use constitute development and ensure they have planning permission if necessary¹. Therefore, if operational development is required to support a change of use, the guidance effectively states that applicants should ensure that they have the correct planning permission for this. In this case, as already stated the appellant has obtained planning permission Ref 22/1756/FUL to facilitate the prior approval application which is the subject of this appeal.
10. Indeed, on the evidence before me, there is nothing to suggest that a negatively worded condition cannot be used to prevent occupation of the proposed dwellinghouses until the approved operational development to facilitate the proposed change of use have been carried out.
11. Whilst I have had regard to the 'Site layout planning for daylight and sunlight: a guide to practice (BR209 2022)' ('BRE Guidance 2022') which advises that living rooms and kitchens need more daylight than bedrooms, and that non-daylit internal kitchens should be avoided wherever possible, this is guidance. Moreover, the GPDO, under Part X, is clear that for the purposes of Part 3 "habitable rooms" means any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.

¹ Paragraph 055 Reference ID: 13-055-20140306

12. Each proposed dwellinghouse would include a bedroom and separate living / diner area. On this basis, the proposed kitchens are only intended for cooking purposes. Also, Appendix 6 of the Council's adopted Local Plan (2018) defines 'habitable rooms' as follows: ...includes all separate living rooms and bedrooms, plus kitchens with a floor area of 13 sqm or more. Each of the proposed kitchens are below 13 sqm in area.
13. For the above reasons, the proposed kitchens are not "habitable rooms" for the purposes of determining this appeal.
14. Although the 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice' (2011) ('BRE Guidance 2011') was replaced with revised BRE Guidance 2022 in July 2022, the appellant's Daylight and Sunlight Assessment was produced in May 2022 and therefore is based on the relevant BRE Guidance 2011, at the time. Also, during the application stage, the local planning authority did not request an updated Daylight and Sunlight Assessment. Therefore, I have determined the appeal on the basis of the submitted Daylight and Sunlight Assessment. Even so, this is based on guidance and I have applied this accordingly.
15. The Daylight and Sunlight Assessment is predicated on the ground floor layout incorporating the alterations proposed under the approved under planning permission Ref 22/1756/FUL.
16. Each proposed habitable room (bedroom and living / diner) would incorporate at least one large window and the Daylight and Sunlight Assessment shows that these rooms would meet or exceed the minimum average daylight factor, set out in the BRE Guidance 2011.
17. Therefore, subject to the implementation of planning permission Ref.22/1756/FUL, and in the absence of any technical evidence to the contrary, I am satisfied that all the habitable rooms for the proposed dwellinghouses would receive adequate natural light. Accordingly, the proposal benefits from the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Conditions

18. Paragraph W (13) of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. For the reasons already given, I have imposed a condition requiring that dwellings hereby approved shall not be occupied until the completion of works approved under planning permission Ref 22/1756/FUL.
19. In the interests of promoting sustainable modes of travel, and because this relates to a matter of prior approval (transport impacts of the development) a condition requiring the provision of cycle storage facilities is necessary. Because the broad locations and arrangement for cycle storage are shown on the submitted plans, further details for these are not necessary.
20. Any prior approval granted under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO is subject to the condition that it must be completed within a period of 3 years of the prior approval date. As such, the Council's suggested condition relating to the timescale for implementation is not required.

21. Also, the GPDO requires 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 Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse. Therefore, the Council's suggested condition specifying this is not necessary. The GPDO also requires that the development must be carried out in accordance with the details provided in the application.
22. Whilst the Council has suggested a condition requiring details for refuse/waste arrangements, this does not relate to the subject matter of the prior approval. Therefore, I have not imposed this condition.
23. Conditions 1 and 2 which prevent any development approved from commencing until they have been complied with, are considered fundamental to the development hereby approved. It is necessary for them to take the form of 'pre-commencement' conditions in order to have their intended effect. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Conclusion

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

M Aqbal

INSPECTOR