



Appeal Decision

Site visit made on 12 September 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2023

Appeal Ref: APP/X3540/W/23/3318024

Unit 21, Earl Soham Business Centre, The Street, Earl Soham, Woodbridge IP13 7SA

- 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 Mr Bruce Hinton against the decision of East Suffolk Council.
 - The application Ref DC/22/3475/P3MA, dated 1 September 2022, was refused by notice dated 27 October 2022.
 - The development proposed is notification of prior approval for the change of use of former canine hydrotherapy centre (Unit 21) to a single residential dwelling.
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Decision

1. The appeal is allowed and 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 of former canine hydrotherapy centre (Unit 21) to a single residential dwelling, in accordance with the terms of the application Ref DC/22/3475/P3MA, and the details submitted with it including the proposed site plan, floor plan and elevations - PW794-PL02, dated 1 September 2022 and subject to the condition that the development must be completed within a period of three years from the date of this decision in accordance with Paragraph MA.2.(5) and the additional condition as follows:
 - 1) In the event that contamination which has not already been identified to the Local Planning Authority (LPA) is found or suspected on the site it must be reported in writing immediately to the Local Planning Authority. No further development (including any construction, demolition, site clearance, removal of underground tanks and relic structures) shall take place until this condition has been complied with in its entirety.

An investigation and risk assessment must be completed in accordance with a scheme which is subject to the approval in writing of the LPA. The investigation and risk assessment must be undertaken by competent persons and conform with prevailing guidance (including BS10175:2011+A2:2017 and the Land Contamination Risk Management (LCRM)) and a written report of the findings must be produced. The written report is subject to the approval in writing of the LPA.

Where remediation is necessary a detailed remediation method statement (RMS) must be prepared, and is subject to the approval in writing of the Local Planning Authority. The RMS must include detailed methodologies for all works to be undertaken, site management procedures, proposed

remediation objectives and remediation criteria. The approved RMS must be carried out in its entirety and the LPA must be given two weeks written notification prior to the commencement of the remedial works.

Main Issue

2. This appeal relates to Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order [2015] (GPDO). There appears to be no dispute between parties that the proposed use would accord with the limitations and restrictions imposed by paragraphs MA.1 and MA.2. I see no reason, within the submitted evidence, to disagree with this assertion. Consequently, the appeal relates solely to the matter of whether the proposal would fall within the definition of Class E (commercial, business and service) within the Town and Country Planning (Use Classes) Order [1987] as amended (UCO).
3. The main issue is therefore whether the proposal would comply with the requirements of Class MA of the GPDO.

Reasons

4. The appeal site is within a single storey building which is currently vacant within the Earl Soham Business Centre. The building is sub-divided into 3 units and the appeal relates only to the part change of use to the northern part of this building.
5. Class MA of the GPDO permits 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 UCO to a use falling within Class C3 (dwellinghouses) of Schedule 1.
6. There is no dispute between the parties that the last use of the unit was for a canine hydrotherapy centre. However, the Council submits that this use does not fall within Class E, as they regard it as *sui generis*, and on that basis the proposal does not meet the provisions of the GPDO with regards to the prior approval process.
7. Since the introduction of Class E some uses which would have previously been considered as *sui generis*, now fall under Class E. This includes a broad and diverse range of uses which principally serve the needs of visiting members of the public and are appropriate in a commercial, business or service locality. The appellant refers to appeal decision APP/M1710/W/18/3215690 however, based on the information before me the question of whether or not canine hydrotherapy is a Class E use was not germane to the appeal decision. There is no definitive view that a canine hydrotherapy use falls within Class E or that it is a use which is *sui generis*. The UCO includes a list of uses to be regarded as *sui generis*, and the list does not include canine hydrotherapy. However, it is clear from the UCO that the list is not exhaustive and other uses may also be *sui generis*.
8. In support of the proposal, the appellant submits that canine hydrotherapy falls within Class E (c)(iii) – “Other appropriate services in commercial, business or service locality”. The appellant states that canine hydrotherapy is a water-based physiotherapy and/or performance testing and that there is no surgical, clinical or medicinal use. They go on to state that clinics, health centres, indoor sport and recreation are all considered to fall under Class E and there is no

distinction that these uses are exclusive to humans only. The appellant advises that the former use was open to visiting members of the public and to that extent the use falls within Class E because it provides a 'service to visiting members of the public'.

9. Having regard to the above and given the immediate site context, which is overtly commercial, the canine hydrotherapy centre also meets the description in Class E of a 'service which is appropriate to provide in a commercial, business or service locality'.
10. The Council has referenced a recently issued Certificate of Lawfulness (DC/22/0040/CLE) and a copy of its decision letter is in evidence. This concluded that the canine hydrotherapy use was sui Generis and repeats the Council's views with respect to use class that it makes in its Statement of Case. However, the details submitted with respect to that decision are not before me and this previous decision does not therefore materially add to the Council's evidence. Accordingly, there is no compelling contrary evidence before me to justify why a canine hydrotherapy use would not fall within the Class E Use Class.
11. For the reasons set out above, I conclude that the appeal site falls within Class E of the UCO, and that the proposal would be within Class MA, Part 3, Schedule 2, of the GPDO. Accordingly, I find that the requirements of MA.1 (1)(b) of the GPDO are met.

Conditions

12. Paragraph MA.2.(5) establishes that the development shall be complete within three years of the prior approval date. Standard conditions are set out in paragraph W of the GPDO. Paragraph W.(12)(a) requires the development to be undertaken in accordance with the approved plans. Furthermore, Paragraph W.(13) states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
13. The Council has suggested conditions be imposed with respect to details of parking areas, cycle storage, and the storage of recycling facilities. However, the Transport and Highway and environmental effects of the development would be limited and would not warrant the need for these conditions to mitigate the effect of the proposal.
14. A condition for unexpected contamination has been requested by the Council. In the interests of the health and safety of future occupiers I consider this condition to be reasonable and necessary.

Conclusion

15. On the evidence before me, it has been demonstrated that the proposal would comply with the relevant requirements of Class MA of the GPDO. I therefore find that the proposal would be permitted development and the appeal is allowed.

R. Gee

INSPECTOR