



Appeal Decision

Site visit made on 30 October 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Appeal Ref: APP/D1590/W/22/3312677

67 West Road, Shoeburyness, Southend-on-Sea SS3 9DT

- 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 Country Planning (General Permitted Development) Order 2015, as amended.
- The appeal is made by Mr Daniel Mead against the decision of Southend-on-Sea Borough Council.
- The application Ref 22/01762/PA3COU, dated 7 September 2022, was refused by notice dated 2 November 2022.
- The development proposed is 'Conversion of dog grooming premises to 1 single flat. Flat to be 39sqm, with over 1sqm in storage and suitable as 1b/1p'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 GPDO), planning permission is granted for 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 Order¹ to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order subject to limitations and conditions.
3. The development applied for was eligible to be Class MA permitted development having regard to the limitations in MA.1. By virtue of condition MA.2(1), before beginning development under Class MA the developer must apply to the local planning authority for a determination as to whether prior approval of the matters in condition MA.2(2) will be required. The appellant submitted the requisite application to the Council.
4. The effect of condition MA.2(4) is that the provisions of GPDO Schedule 2, Part 3, Class W apply in this case. Paragraph W(11) includes that the development must not begin before (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; or (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval.
5. The Council's decision notice states that 'prior approval is required but prior approval is refused' and in reason for refusal 01 'the development applied for appears to have commenced on site'.

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

Main Issues

6. The main issues in this case are:

- whether the development applied for is Class MA permitted development, having regard to condition MA.2(4) and the provisions of Class W, paragraph W(11); and
- if it is permitted development, whether it should be given prior approval having regard to Class MA, paragraph MA.2(2).

Reasons

7. The appeal site, as defined by the red line in the submitted plans, is the ground floor part of a two-storey end of terrace building (the appeal building) and land within the curtilage of the appeal building. The first floor above is a separate flat. There is no evidence that the appellant sought change of use of the curtilage land. Use of that land is not, though, determinative in this case because it can already be accessed and used by the occupant(s) of the first floor flat and the appeal building still needs to be considered.
8. The as proposed plans show the appeal building configured as a 1-bedroom flat, including minor internal partition wall changes but significant external alterations to the front elevation. These are to replace a mainly glazed entrance door and top fanlight with a new mostly solid door, replace a large plate glass shopfront window with a smaller 3 pane casement window and requisite reinstatement works.
9. The Council amended the appellant's description of development to '*change of use of ground floor dog grooming parlour (Class E) to form 1 self-contained flats (Class C3) and alter front elevation (prior approval)*'. It considered the application on this basis. At a site visit it appeared to Council officers that the development had commenced and the site was already in use as a dwelling. The Council took the view that the external alterations 'form part of the development to change the use of the property to a dwelling' and 'a clear intention of the applicant to create a dwelling'.
10. But Class MA does not permit operations required to facilitate the change of use applied for. Consequently, although shown in the plans the external alterations are not part of the prior approval application. Therefore, while at least the new window was installed after the application was submitted and before the Council's decision, none of the external alterations per se conflict with the provisions of paragraph W(11) or therefore condition MA.2(4). However, installing even the new window and associated reinstatement works might be indicative alone, or in combination with other considerations, of a change of use.
11. The appellant's photograph shows the appeal building before external alteration, consistent with the as existing front elevation plan. A Council photograph taken on 12 October 2022 shows the casement window in situ, though not the new entrance door, with reinstatement works in progress.
12. I am informed that the appeal building had been poorly maintained by a previous owner so the appellant decided it needed repair. But after the application was submitted to the Council it is suggested to me that he carried out refurbishment, not conversion works. There is no dispute that the front

elevation fenestration was changed from one large, fixed pane window to a smaller three casement window and the front entrance door replaced including works for 'making good'. In other words, the external alterations shown in the application plans. By dictionary definition conversion means 'the adaptation of a building or part of a building for a new use'. While there is no evidence the external alterations were essential for residential use of the appeal building, the appellant clearly considered them integral to facilitate this.

13. I have no reason to believe that these works did not coincidentally help to remediate internal damp, improve thermal performance and make the appeal building more secure, so were no doubt desirable as part of its refurbishment or conversion. However, it is evident from the appellant's photograph that even if replacing the window helped to remedy or stabilise these deficiencies of the appeal building, it materially changed its external appearance. Moreover, there is no evidence that this was the only way to protect the appeal building or that these works had to be executed before the Council's decision on the application – for instance for reason of safety, including the integrity of the structure or fabric of the appeal building – as distinct from attending to its decorative or functional condition.
14. In the appeal, I am informed the appellant intended that 'following approval' he would 'begin adjusting internal alterations to allow for bathroom suites, bedroom furnishings, internal homely floor finishes and so on to begin the change of use', including 'specific furnishings, appliances etc.'. There is no evidence of furnishings or personal effects or occupation of the appeal building.
15. However, the external alterations are finished, including a new entrance door and the front of the appeal building appears to have been recently decorated. Likewise painted and decorated internally to a high standard, including with new wall heaters and floor covering in situ. Despite not all fixtures and fittings yet installed, and some building or decorating tools or equipment placed on the front room floor (annotated 'lounge' in the submitted plans), the evident internal and external condition and finish goes well beyond what would likely have been reasonably necessary to simply remedy or stabilise the deficiencies of the appeal building, pending a decision on the prior approval application. There is no evidence that a decision was going to be unduly delayed, indeed it was issued promptly by the Council.
16. The appellant suggests that the appeal building could still be used for a purpose in Class E, though not by what lawful means. Even if reverting to such use is possible, there is no objective evidence of any specific ambition in this regard; such as that the appellant is engaged in a suitable business or that the appeal building has been marketed for Class E use. Furthermore, the now fully completed external alterations give the appeal building an overt, coherent and legible domestic appearance, similar to some residential properties either side of it or near it. This likely renders it appreciably less suitable or attractive for commercial use.
17. During the appeal the appellant submitted a copy of a Council decision notice dated 12 May 2023 (Ref 22/02355/FUL). It grants planning permission at the appeal site for development described by the Council as 'replace window and door to ground floor front elevation'. While not determinative in this appeal (for the reason explained earlier above), it nonetheless reinforces my impression about the main motive of the appellant in respect of the nature of the external

alterations and internal works carried out to the appeal building before and after the Council's decision.

18. I am not, therefore, satisfied that the appeal building has been altered at any time otherwise than primarily consistent with the appellant's purpose and intention to create a dwelling, in-line with what was illustrated in the submitted application plans. It is plainly no longer at a remedial stage or condition but is substantially complete such that the internal and external building envelope has, in my view, as a matter of fact and degree been converted for residential use and occupation, albeit not yet occupied. Consequently, having regard to the physical state of the appeal building and the intended use², I consider that in the round the change of use in this case has begun despite that the actual use itself (residential occupation) has not started³.
19. Taking account of all the above, I find that the development fails to adhere to the provisions of Class W paragraph W(11)(a) or (b) so by virtue of condition MA.2(4) falls outside of the Class MA permitted development right. Prior approval cannot be granted retrospectively for development that has already begun even if it is not completed, including during the appeal process⁴. I do not therefore need to consider Class MA, paragraph MA.2(2).

Other Matters

20. The Council's reason for refusal 02 concerns location of the appeal site within a zone of influence of Essex coastline designated as European sites to protect habitat for important bird species. Article 3(1) of the GPDO grants planning permission for Schedule 2 permitted development subject to Regulations 75-78 of the habitats regulations⁵. In Regulation 75 it is a condition of permitted development rights that development cannot lawfully begin until, in this case, the appellant has received written notification of the approval of the Council under Regulation 77 about proposed mitigation and it is satisfied that the development would not cause harm to the integrity of the European sites.
21. The appellant states that a mitigation payment 'will' be made but I have not been informed that Regulation 77 approval has been given by the Council. Since I intend to dismiss the appeal there is no need for me to consider this matter further because it would not alter my decision or therefore affect the outcome of the appeal. It is a separate matter in the first instance for the Council to determine outside of the prior approval process.

Conclusion

For the reasons given above the appeal does not succeed.

Robin Buchanan

INSPECTOR

² *Impey v SSE & Lake District SPB* [1981] JPL 363

³ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

⁴ *Winters v SSCLG & Havering LBC* [2017] EWHC 357 (Admin)

⁵ The Conservation of Habitats and Species Regulations 2017