



Appeal Decision

Site visit made on 9 January 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH February 2024

Appeal Ref: APP/N5660/W/23/3324399

14 Thornton Street, London SW9 0BL

- 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 Julian Berger of Circle Land Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 22/03784/P3MA, dated 21 October 2022, was refused by notice dated 21 December 2022 and printed 22 December 2022.
 - The development proposed comprises the conversion of the vacant, two storey building at 14 Thornton Street to create 5x. self-contained residential apartments. The flats will be divided horizontally with flats 1 and 2 occupying the ground floor space and flats 3-5 occupying the 1st floor space.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the banner heading above is taken from the application form but has been shortened in the interests of precision.

Background and Main Issue

3. Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permits the change of use of a building within Class E (commercial, business and service) of Schedule 2 of the Use Classes Order (UCO) to a use within Class C3 (dwellinghouses) of Schedule 1 of the UCO.
4. Development is permitted under Class MA subject to the limitations set out in paragraph MA.1, and the conditions set out in paragraph MA.2, which include matters in respect of which the developer must apply to the local planning authority (LPA) for a determination as to whether the prior approval of the authority will be required.
5. Article 4 of the GPDO allows the Secretary of State or the LPA to make a direction disapplying the permission granted by Article 3 for certain classes of development in Schedule 2 of the GPDO if it is expedient. The effect of an Article 4 direction is that development should not be carried out unless an application has been made for permission and this has been granted. The Article 4 direction must specify the area and class of development to which it relates.

6. The Council made a non-immediate direction under Article 4 of the GPDO in July 2021 withdrawing permitted development rights under Class MA of the GPDO. This was later confirmed, but the Secretary of State subsequently made a direction to modify the Article 4 direction on 18 October 2022. The Council states that this came into force on 28 October 2022. The appeal site is within part of the area of the modified Article 4 direction.
7. The Council refused the application for prior approval in December 2022 on the basis that it does not meet the condition in paragraph MA.2(2)(a) relating to the transport impacts of the development, particularly to ensure safe access.
8. Therefore, the main issue in this appeal is whether the proposed development would be granted planning permission under Articles 3 and 4 of the GPDO. If the proposal is permitted development, I would then consider the transport impacts of the proposed development.

Reasons

9. The procedures for making or modifying an Article 4 direction are set out in Schedule 3 of the GPDO, where paragraphs 1(1), 1(2) and 1(18) are particularly relevant. These state that a direction by the Secretary of State comes into force on the date when the LPA serves notice on the occupier or owner, or on the date when the LPA first publishes or displays the notice by means of local advertisement and site display at no fewer than 2 locations within the area to which the direction relates. The latter applies if the LPA consider that individual service on an owner or occupier is impracticable because it is difficult to identify or locate that person or the number of owners or occupiers within the area of the Article 4 direction makes individual service impracticable.
10. The appellant has not been served with a notice of the Article 4 direction and considers that this should have occurred, but this is not required if the Council considers it to be impracticable. Further, the appellant is not aware of any local advertisements or site notices in respect of the direction. However, a notice of the Article 4 direction dated 28 October 2022 is on the Council's website and the Council confirms that this is the date it came into force. There is no evidence that the Article 4 direction is invalid or that the Council has not correctly carried out the procedures under Schedule 3. As such, I consider that the Article 4 direction is in place and has been for some time.
11. Article 4(2) of the GPDO sets out where an Article 4 direction does not affect the development permitted by the GPDO. This includes any development permitted in Schedule 2 where the prior approval date is before the date when the direction comes into force and the development is completed within 3 years of the prior approval date. The prior approval date is the date when prior approval is given or the period for determination has expired without the applicant being notified whether prior approval is required, given or refused. In the case of the appeal proposal, there was no prior approval in place nor expiry of the determination period by 28 October 2022 when the direction came into force, thus the Article 4 direction applies.
12. The Article 4 direction was not a reason for refusal and the appellant was not aware of it until it was included as a reason for refusal of a subsequent application (application ref 23/00567/P3MA). Nevertheless, as there is an Article 4 direction in force which withdraws permitted development rights under

Class MA for the appeal site, the proposal would not be permitted development under the GPDO.

13. Even if the Council did not make its decision within the required 56-day period, the proposal would not be permitted development by virtue of the Article 4 direction which was already in place.
14. Consequently, I conclude that the proposed development would not be granted planning permission under Articles 3 and 4 of the GPDO.
15. As I am dismissing the appeal for not being permitted development, there is no need to consider the transport impacts of the proposal, or the amended plans and unilateral undertaking submitted in response to the reasons for refusal.

Other Matters

16. The site lies within the Brixton Conservation Area (CA), but as I am dismissing the appeal for not being permitted development under the GPDO, there is no need for me to consider whether the proposal preserves or enhances the character or appearance of the CA.
17. There are references to several other matters that are considered to support the proposal, including the need for dwellings, the refurbishment of a dilapidated building and the approval of the adjoining site at 290 and 292 Brixton Road without the same needs for refuse and cycle facilities and restrictions on residents' parking permits. However, the GPDO grants planning permission within specified parameters, and none of these points affect whether the proposal is permitted development.
18. The appellant is generally dissatisfied with the Council's approach. However, this is a matter between those parties, and it cannot have any bearing on my determination of this appeal.

Conclusion

19. For the reasons given above, the appeal is dismissed.

A Wright

INSPECTOR