



Appeal Decisions

Site visit made on 16 January 2024

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2024

Appeal Ref: APP/T2215/W/23/3318539

26 Lowfield Street, Dartford DA1 1HD

- 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 Mark Gold against the decision of Dartford Borough Council.
 - The application Ref is DA/22/00924/PMA.
 - The development proposed is change of use from Class E to residential (Class C3) to form 5 self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal was submitted alongside another appeal¹ for this site, and these were identified as linked cases. However, the main issues in each case are materially different. The cases have therefore been considered independently with a separate decision for each.
3. Schedule 2, Part 3, Paragraph W(10) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) requires the local planning authority to assess the proposed development taking into account any representations received and having regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application. My determination of this appeal has been made on the same basis.
4. Prior approval applications must not be determined, expressly or otherwise, on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. I have had regard to the policies of the development plan and local guidance referred to in the evidence only in so far as they relate to the subject matter of the prior approval as material considerations. However, these have not been decisive in my determination of the appeal.
5. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
6. Class MA does not permit operations required to facilitate the change of use. It is therefore well suited to buildings that are in good condition and that can be

¹ Appeal Ref: APP/T2215/W/23/3318535

readily repurposed as residential accommodation. While the proposed plans before me appear to show various works to the exterior of the appeal building and land within its curtilage, any building or other operations (other than the change of use in question) do not benefit from the provisions of Class MA and may require separate planning permission.

Main Issues

7. Under Article 3(1) and Schedule 2, Part 3, Class MA of 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 Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order, subject to limitations and conditions.
8. Article 3(4) of the GPDO however clarifies that nothing in the GPDO permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990 (as amended) otherwise than by the GPDO.
9. Additionally, Paragraph MA.2(2) of Class MA requires the developer to apply to the local planning authority for a determination as to whether prior approval will be required in respect of various specified matters.
10. The Council refused the application for prior approval solely on the basis that it conflicted with the conditions and legal agreement associated with an earlier planning permission, contrary to Article 3(4).
11. Given this conclusion, the Council did not go on to consider whether prior approval should be given, with regard to the matters set out in paragraph MA.2(2). Nevertheless, in order that the views of the parties in respect of the prior approval matters could be duly considered in the event that the proposal was found to benefit from the permitted development rights described in Class MA, both parties have been given an opportunity to provide any comments they may have specifically with respect to the prior approval matters.
12. Through the appeal, the Council has raised concerns in respect of transport impacts of the development, particularly to ensure safe site access; the impact of the change of use on the character or sustainability of the conservation area; and the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council also consider further details and mitigation measures are required to assess impacts of noise from commercial premises on the intended occupiers of the development.
13. The main issues are therefore:
 - Whether the proposal would be permitted development under Article 3 and Schedule 2 Part 3 of the GPDO, with particular regard to whether the limitations in Article 3(4) would be breached;
 - If the proposal is permitted development, whether prior approval should be granted, having particular regard to:
 - The provision of adequate natural light in all habitable rooms of the dwellinghouses;

- Impacts of noise from commercial premises on the intended occupiers of the development;
- Transport impacts of the development, particularly to ensure safe site access; and
- Where (i) the building is located in a conservation area, and (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area.

Reasons

Whether the proposal is permitted development

14. Planning permission was granted in July 2019² for a large-scale redevelopment of a portion of Dartford town centre, including refurbishment of No. 26 Lowfield Street. I could see that this permission has been implemented and at least partly completed at the time of my site visit, with the new residential buildings adjacent to the appeal site appearing occupied.
15. No 26 on the other hand remains unoccupied, it is in a state of disrepair and exposed to the elements. Many of its windows are broken or boarded up, and there is a large opening in the rear elevation at ground floor. There is no evidence of work having been carried out to the building itself pursuant to the previous permission. A recently erected tall timber fence however separates the building from the rest of the wider development site.
16. The previous permission was subject to numerous planning conditions, a number of which applied to the appeal site. In their evidence, the Council refer to several conditions of the previous permission, including condition Nos 2, 11, 17, 18 and 25, with which they consider there to be a conflict. In order for existing conditions to invoke Article 3(4) of the GPDO, the condition must not only specify what is being permitted, but also contain something more which explicitly or implicitly restricts future development.
17. Condition No 2 of the previous permission sets out a list of approved plans and documents, which the development shall be carried out in accordance with. These include a ground floor plan³ covering the wider development site, an external hard landscape plan⁴, an external soft landscape plan⁵ and a bat roost assessment and enhancement strategy⁶.
18. The 3 approved plans depict the site layout of the approved development. They show the appeal building as providing office space and a commercial bike store at ground floor. They also depict areas of hard and soft landscaping to the rear of the appeal building.
19. In respect of the approved ground floor plan, the appeal proposal only concerns the change of use of the upper floors, with the ground floor to remain unchanged. The proposed upper floors would be accessible from a dedicated

² Council Ref: 18/01557/VCON

³ Drawing no. 1961_305 Revision P9

⁴ Drawing no. D2617-FAB-XX-00-DR-L-200 Revision P8

⁵ Drawing no. D2617-FAB-XX-00-DR-L-310 Revision P1

⁶ Bat Ecological and Enhancement Strategy. Arbtech, Dec 2016

Bat Survey preliminary Roost Assessment, Arbtech, Dec 2016

Bat Survey and Activity by Arbtech dated 31.07.18 (approved under reference 18/00983/CDNA)

entrance at ground floor level and would be clearly separated from the ground floor space. There is nothing in the proposal before me that would therefore preclude the use of the ground floor as approved.

20. In respect of the approved hard and soft landscape plans, while a bin and bike store are shown on the proposed plans in the location of the approved landscaping, these are operations that are beyond the scope of this appeal and would require separate permission, for the reasons set out above. Accordingly, the appeal proposal to change the use of the upper floors of the building would not conflict with the approved hard and soft landscaping plans.
21. The Council allege that a residential use could result in conflict with the approved bat roost assessment and enhancement strategy. While section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) includes a duty that every public body must have regard to the conservation and enhancement of biodiversity in the proper exercise of its functions, the GPDO does not – in Article 3(1) or otherwise – provide that permitted development is subject to the s40 duty.
22. Moreover, there is no compelling evidence before me to demonstrate how changing the use of the upper floors of the building would preclude implementation of the bat mitigation measures referred to.
23. Condition No 11 requires that, prior to commencement of work to No 26, a detailed methodology for the external works for refurbishment and repair of the building must be submitted to and approved by the local planning authority. However, it is not clear from the evidence before me and my own observations that work to No 26 pursuant to the previous permission has commenced. It is therefore not clear that the trigger point for the condition has been reached.
24. This condition does not otherwise require these details to be provided and approved, nor for the approved works to be implemented, within a specific timeframe. There is thus no evidence of any obligation on the developer to complete the entire development. Planning conditions cannot be used for this purpose as they would not meet the test of necessity or be enforceable, as set out in the Planning Practice Guidance (PPG).
25. The appellant is therefore at liberty not to implement this element of the scheme, and to pursue an alternative form of development subject to receiving the necessary consent, should they so choose. Any additional building or other operations falling within the definition of development would require planning permission, at which point the effect on the character and appearance of the area, including the Dartford Town Centre Conservation Area (CA) could be duly considered, where appropriate.
26. Condition Nos 17 and 18 similarly require details of external materials and windows and doors to be submitted to and approved by the local planning authority before commencement of each phase of the development, and before installation of any windows and doors, respectively. However, commencement of a change of use granted permission by the GPDO would not be in breach of condition Nos 17 or 18, as this would not be in pursuance of the previous permission.
27. Condition No 25 of the previous permission requires hard and soft landscaping details for all phases of development, other than phase 1, to be submitted and

approved alongside the reserved matters details for the respective part of the development. This also requires a programme for implementation to be agreed. Such landscaping must thereafter be maintained for a period of five years. A similar requirement for phase 1 is set out in condition No 35.

28. As building operations on the area of landscaping to the rear of the appeal building are not permitted by Class MA, there cannot be any conflict pertaining to the implementation or maintenance of the approved hard and soft landscaping arising from the appeal proposal.
29. In view of the above, I have been unable to identify any aspect of the appeal proposal that would be contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990 (as amended). Consequently, the limitations in Article 3(4) would not be breached and therefore the proposal would be permitted development under Article 3 and Schedule 2 Part 3 of the GPDO, subject to compliance with all other relevant limitations and conditions.

Provision of adequate natural light in all habitable rooms

30. The proposed plans before me show windows in the front and rear elevations of the building serving the habitable rooms of each of the proposed flats. However, while the existing building does feature window openings broadly in the locations depicted on the proposed plans, many are currently missing glazing, are boarded up or are obscured by self-seeded vegetation that has established itself on the building. Additionally, I did not see any third-floor roof lights on the existing building, as illustrated in the existing and proposed plans.
31. In the first instance, changes to the existing fenestration of the building as depicted in the proposed plans, including replacement windows, alterations to window dimensions, and installation of roof lights, would not benefit from planning permission granted by Class MA.
32. Based on the current condition of the building, adequate natural light would not be provided to all habitable rooms. Some degree of work to its exterior, including repairs to, reglazing or replacement of existing windows, removal of vegetation and removal of boarding across window openings, would thus be required. Given the small size of the existing dormer windows, natural light in the large open plan kitchen/living/dining area of Unit 5 would also be unduly constrained without installation of the rooflights shown on the plans.
33. Such works may require their own permission. There is however no evidence before me of such permission having been granted or, alternatively, any formal confirmation (such as a Lawful Development Certificate) to demonstrate it would not be required. If permission would be required, it cannot be assumed it would be granted.
34. Furthermore, as Class MA permits the change of use of the building only, planning conditions cannot be used to require the implementation of other operations to facilitate the change of use in this instance. There is thus no mechanism before me to ensure that any such work would take place in the event the appeal was allowed.
35. In view of the above, I find that the proposal would not provide adequate natural light in all habitable rooms of the dwellinghouses. The proposal would conflict with Paragraph 135 of the Framework which, among other provisions,

seeks to ensure that developments create places with a high standard of amenity for existing and future users.

Impacts of noise from commercial premises on the intended occupiers

36. The appeal site is in a town centre location with a frontage onto the adopted highway. There is a shopping centre opposite and various commercial uses in the vicinity. There is also a bus stop located immediately adjacent to the site. Representations from the Council's Environmental Health section note that there is likely to be high levels of noise associated with nearby commercial uses and road traffic.
37. The Council is satisfied that a planning condition could be used to secure further details of noise mitigation measures to ensure an acceptable standard of living accommodation can be provided in this regard. The appellant has confirmed their agreement to such a condition.
38. However, given the existing condition of the building, including lack of glazing in places and large openings in the exterior walls, the extent of work required to provide an acceptable noise environment for future occupiers is not clear. It is also unclear whether such work could be undertaken without further permission, and whether such permission, if required, would be granted.
39. As set out above, such work would not benefit from permission granted by Class MA. Accordingly, a planning condition could not be used to require its implementation, and there is thus no mechanism before me to ensure it would take place were the appeal allowed.
40. I thus conclude that the noise from commercial premises would have a harmful impact on the intended occupiers. The proposal would also conflict with Paragraph 135 of the Framework in this regard.

Transport impacts

41. The proposed plans include the provision of a bin store structure to the rear of the building at ground floor. This structure is not permitted by Class MA. It thus does not form part of the appeal proposal and its installation cannot be required by planning condition.
42. Nevertheless, the appellant has suggested that it is not unusual in similar situations for a sack refuse collection scheme to operate. I saw on my site visit that the site is not linked from the rear to the highway. In any event, access to the rear for occupiers of upper floor flats would be somewhat convoluted. The plans before me do not show space within the building for the convenient and safe storage of waste prior to its collection. Access for the collection of refuse, and where refuse would be stored while awaiting collection, is thus ambiguous.
43. While the management of refuse can in some cases be dealt with by planning condition, there is insufficient clarity regarding how the storage and collection of refuse would operate here given the site constraints. In view of this, I cannot be sure that safe access could be provided, or that refuse arrangements would not give rise to unacceptable transport impacts.
44. Reference has also been made by the Council to negative effects on the movement of pedestrians. However, this appears to be based on a reduction in the size of the open space to the rear of the appeal building, precipitated by

the construction of bin and bike stores in this area. As such development does not fall within the scope of this appeal, these effects are not relevant.

45. I conclude that the transport impacts arising from the development, with particular regard to ensuring safe site access, would be unacceptable. The proposal would conflict with Paragraphs 115 and 116 of the Framework. These paragraphs, among other provisions, indicate that development may be refused on highway grounds if there would be an unacceptable impact on highway safety, and that applications for development should create places that are safe, secure and attractive and allow for access by service vehicles.

The character or sustainability of the conservation area

46. The Council has raised concerns that if the building is not repaired sensitively then it is likely to result in an unsympathetic built form which would be harmful and would also detract from the wider heritage setting and the regeneration value to the town centre. Moreover, it is alleged that the proposal would mean a reduced open area which will negatively affect the setting of the development and town centre and amenity value of the site. This however relates to operations that do not benefit from permission by virtue of Class MA, and concern the external appearance of the building and its effect on the character and appearance of the area, including the CA.
47. Paragraph MA.2(2)(e) does concern the impact of the change of use on the character or sustainability of the conservation area. However, this is only applicable to development within a conservation area that involves a change of use of the whole or part of the ground floor. As the appeal proposal only relates to the change of use of the upper floors of the building, this is not a prior approval matter in this case.

Other Matters

48. The Council also contends that the proposal would conflict with the legal agreement associated with the previous permission. However, the provisions of Article 3(4) extend only to conditions imposed by any planning permission granted or deemed to be granted under Part 3 of the Act. Any perceived conflict with the legal agreement is thus beyond the scope of this appeal.

Conclusion

49. I have found that the development would constitute permitted development based on the evidence before me and subject to all other limitations and conditions of the GPDO. However, due to the inadequate provision of natural light, and unacceptable noise and transport impacts, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR