



Appeal Decision

Site visit made on 20 February 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th April 2024

Appeal Ref: APP/U5360/W/23/3328874

4A Bushberry Road, London E9 5SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Ben Palmer against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/1238.
 - The development proposed is the conversion of existing commercial garage into ancillary residential garage attached to adjoining residential dwelling, with no physical alterations.
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Decision

1. The appeal is dismissed.

Procedure Matter

2. The Council in assessing the prior approval application considered that the workshop the subject of the proposal benefits from a Class E use of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). However, as I saw at the site visit and on the evidence presented there is an internal doorway between the existing dwelling and the workshop. In the interests of natural justice and given there was some ambiguity concerning this including whether the dwellinghouse and workshop had a mixed use, views were sought from the main parties. I have considered the comments received and given there was no substantive evidence to direct me otherwise to reach a different conclusion other than what the Council determined the application on, I consider that the workshop would fall within Use Class E of the UCO, the Council dealt with the proposal on this basis and so shall I.

Background and Main Issue

3. Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses).
4. Development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2.

5. Prior approval was refused by the Council on the grounds that the proposed development would result in the enlargement of an existing residential unit which the Council considers is contrary to Class MA of the GPDO which seeks to create new self-contained residential units.
6. Therefore, the main issue is whether the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

7. The appeal site comprises a single storey workshop, situated on a corner plot within a terrace row of two-storey residential properties. The workshop is a l-shaped building, with a large roller shutter door providing access to the workshop from the street and is attached to 4a Bushberry Road. The surrounding area is predominantly residential, with the workshop representing an isolated commercial use within an otherwise wholly residential street.
8. The proposed development would involve the change of use from a Class E (commercial, business and service) use to Class C3 (dwellinghouses) use. The use of the workshop would be changed to provide an incidental garage for the dwelling. It would not involve the creation of habitable accommodation.
9. The primary point of dispute between the parties is whether or not Class MA of the GPDO can grant prior approval for the enlargement of an existing dwellinghouse or the creation of incidental accommodation. The Council in refusing the application for prior approval concluded that the proposed development would be contrary to the provisions of Class MA. In counter argument, the appellant relies upon their interpretation of natural and ordinary meaning of the wording in the legislation, which they assert is concerned with use classes and does not specify a requirement for the creation of a new dwellinghouse.
10. As outlined above, Class MA permits the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses). It is established in case law that the use of the word dwellinghouse can mean either the singular or plural of that word. Therefore, taking the natural and ordinary meaning of the wording used in the legislation, Class MA of the GPDO permits the change of use to a dwellinghouse or dwellinghouses, for which there is no maximum number.
11. The explanatory note¹ to the 2021 amendment to the GPDO sets out that the purpose of introducing Class MA (alongside other revisions to the GPDO) was to support mixed and flexible high streets, stimulate economic recovery in response to the Covid-19 pandemic, and deliver additional homes more easily. The explanatory note consistently uses the phrase 'deliver additional homes', and there is no mention of newly created rights permitting extensions or alterations to existing residential dwellings. It therefore follows that if it was intended for Class MA to apply to extensions or alterations to the existing dwellinghouse or to the creation of ancillary accommodation that the legislation would have included wording to that effect, which in this case Class MA does not.

¹ Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021 – 2021 No.428

12. I have had regard to the appellant's Counsel's advice in support of their appeal, dated 9 May 2023. However, I disagree with their interpretation of the natural and ordinary meaning of the wording of the GPDO, which they state supports the assertion that Class MA permits an extension of an existing residential dwellinghouse. For the reasons given above, the natural and ordinary meaning of dwellinghouse, would be as dwelling or dwellings and not as an extended part of an existing dwelling.
13. In reaching this conclusion, I have also had regard to Paragraph W.2(bc) of the GPDO which requires a floor plan indicating the total floor space in square metres of each dwellinghouse to be provided, which further supports the intention of Class MA is to deliver additional homes, rather than to facilitate the extension or alteration of existing homes.
14. Consequently, I therefore conclude that the proposal would not fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Conclusion

15. For the reasons given above, the appeal should be dismissed.

K Lancaster

INSPECTOR