



Appeal Decision

Site visit made on 9 April 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal Ref: APP/X1545/W/23/3328511

44-48 High Street, Maldon, Essex CM9 5PN

- 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 Aslam, Eclipse Property against the decision of Maldon District Council.
 - The application Ref is PACUCD/MAL/23/00560.
 - The development proposed was described as 'change of use of the first and second floors from commercial, business and service (Use Class E) to residential (Use Class C3). 4 no 2-bed 4-person flats, and 1 no. 3-bed 6-person flat are proposed. New cycle storage.'
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appeal relates to an application made pursuant to Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Class MA contains a permitted development right for changes of use from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order 1987 to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order subject to certain limitations and conditions.
3. The condition at MA.2(2) establishes a requirement that before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to certain specified matters. Paragraph W(11) further provides that development must not begin before the occurrence of one of three specified circumstances, none of which would apply here
4. At my visit, I saw that internal works appeared to be ongoing at the first and second floor levels of the appeal building, ostensibly reflecting the layout shown on the proposed floor plans for the development applied for. I therefore invited the main parties to provide their views on whether or not the change of use applied for may have begun and any implications for the appeal. I have taken the comments made into account.

Main Issue

5. The main issue is whether or not the prior approval application was made 'before beginning the development'.

Reasons

6. Under s55 of the Town and Country Planning Act 1990 ('the Act'), 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
7. Class MA does not permit operations required to facilitate the change of use but insofar as the physical works that I observed affect only the interior of the appeal building and do not materially affect its external appearance, s55(2) of the Act provides that these operations shall not be taken for the purposes of the Act to involve development of the land. Nevertheless, the making of a material change of use, which would be development under s55 of the Act, may necessitate and involve the carrying out of operations to facilitate that use.
8. In this case, the appeal building was not obviously in active occupation for any use at the time of my site visit. However, as the appellant has noted, the High Court judgement in *Impey v SSE & Lake District SPB [1981] JPL 363* held that in assessing when a change of use to a dwellinghouse has occurred, both the physical state of the premises and the actual, intended or attempted use are important. Neither factor is decisive, and matters need to be looked at in the round. In this context, the fact that the building is currently unoccupied is not determinative that a change of use has not occurred.
9. In respect of the physical state of the premises, the appellant advises that the internal works that I saw on the site were undertaken over a year ago and stopped in April 2023. At first-floor level, the works comprise little more than the installation of studwork frames and some utility pipework and channels. The works on this floor are clearly unfinished and I find that the first-floor level of the building would plainly not offer viable facilities for living.
10. However, at second-floor level where one flat is proposed, I saw painted internal walls and doors, kitchen and bathroom facilities and features including radiators, plug sockets and light fittings. I noted that floor coverings were not fitted throughout and the presence of some materials and decorating tools. Even so, the space was in reasonably good order and appeared to me to be substantially complete with outstanding works likely to be limited to little more than minor finishing works or decoration. In my judgement, the second-floor would reasonably provide viable facilities for habitation and day to day living.
11. The appellant argues that the second-floor cannot be let, sold or used as a dwelling. They highlight that it is accessed via the ground and first-floor levels which are paused construction areas. They also advise that the second-floor does not have building regulations approval for conversion and that there has been no marketing or advertising of the accommodation. However, the nature of the works that I observed appear to me to have been carried out for the specific purpose of enabling use as a dwellinghouse. Indeed, the appellant acknowledges that the works undertaken reflect the layout of the scheme which is the subject of the current appeal. Having regard to its physical state, I am not persuaded that the second-floor level of the building could reasonably be interpreted as having commercial, business or service use. Instead, the layout, finish and condition of this floor give it an overtly domestic appearance and would all clearly suggest to me an intended residential use. I consider as a matter of fact and degree that the second-floor has been converted for residential use.

12. Moreover, the Council refers to an enforcement investigation with visits to the site in January and February 2023 and it has provided copies of photographs taken which are date stamped 24 January 2023. These pre-date the application for prior approval which was made on 5 June 2023 by some months. The appellant has not disputed the date or content of these photographs which show beds within rooms on the second-floor, some with sheets and blankets on, suggesting they were being used for sleeping. Also visible in the photographs are items of furniture including tables and chairs, as well as electronic equipment such as screens, remote controls and a stereo and personal effects including suitcases/bags, shoes and what appear to be toiletries and medication. The nature and extent of these elements would clearly suggest to me that there was residential occupation of the space. Despite their initial assertions that there has been no habitation of either floor and that the second-floor was used by contractors, the appellant has not offered any plausible alternative account to explain the apparent residential occupation shown in the photographs.
13. Having regard to the physical state of the appeal building and its intended and apparent actual use, I find in the round and as a matter of fact and degree that the change of use of the second-floor level to a dwellinghouse began before the prior approval application was made on 5 June 2023. It may not have been in active use as dwellinghouses at the time of my visit and I note the appellant's comments that they have not heard from the Council in respect of the enforcement investigation since June 2023. However, these factors do not alter my conclusion on the balance of the evidence before me that the material change of use which would comprise development under s55 of the Act had begun.
14. I therefore conclude that the development applied for, comprising 'change of use of the first and second floors from commercial, business and service (Use Class E) to residential (Use Class C3). 4 no 2-bed 4-person flats, and 1 no. 3-bed 6-person flat' had begun before the prior approval application was made. Works may not be fully complete, but the proposal would not therefore comply with Condition MA.2(2) of the GPDO. As a consequence, prior approval cannot be granted and the appeal should be dismissed.
15. As a result, it is not necessary for me to further consider the four reasons that the Council gave for refusing the prior approval application. This is because even if I were to find the proposal to be acceptable in relation to these matters, it could not alter my overall conclusion that prior approval cannot be granted.

Conclusion

16. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR