



Appeal Decision

Site visit made on 23 April 2024

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024.

Appeal Ref: APP/Y1110/W/23/3332294

Existing garage-workshop-store B1/8 building, adjacent Pocombe Orchard, Tedburn Road, Exeter EX2 9SX

- 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 Paul Warren against the decision of Exeter City Council.
 - The application Ref is 23/0280/PDCD.
 - The development proposed is described in the application as "Conversion of the existing B1/8 unit to a single 1 bed 1 person dwelling under Class M of the GPDO with access as existing off the Tedburn Rd to a driveway/parking area to the south of the existing building. Proposals have been formulated to retain the exg building in its entirety with only the front vehicle door being removed and exg opening infilled with full height window/door/blanking panel and the exg pedestrian access door removed, but opening retained and infilled with full height window."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above is lengthy, includes language that is not an act of development, and refers to Class M. It is clear from the evidence that the proposal seeks prior approval under Class MA. The description of development in the Council's decision notice and the appellant's appeal form refers to *prior approval for the conversion of the existing workshop (B1/8 use) to a one bed one person dwelling*. I have dealt with the appeal on this basis.
3. The Planning Practice Guidance states that *permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity*. This is effectively a 2-stage process where it is necessary in the first instance to determine whether or not the proposal is permitted development.
4. Class MA of Part 3 of Schedule 2 to the General Permitted Development Order (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). Whilst the plans show operational development, permission cannot be granted for works that fall outside the remit of the prior approval procedure.

5. Paragraph MA.1 of Class MA sets out a number of requirements, including (b), that the building "*fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval*". Prior to 1st September 2020, sub-paragraph (2) identifies Classes A1, A2, A3, B1, D1(a), D1(b) and D2(e) as being applicable and that Class E applies on or after 1st September 2020. The Council is concerned that the required continuous period has not been demonstrated. There is no dispute over compliance with the other requirements set out in this paragraph, and I find no reason to disagree.
6. Further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject, in part, to 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(2). One such condition includes (c) flooding risks in relation to the building. The Council's second reason for refusal relates to this issue.
7. Planning permission was granted in 2005 (Ref:05/1554/03) for a single storey building for use as a garage, workshop, and store under classes B1 and B8. Condition 4 of this permission states "*The building hereby permitted shall not be used for any purpose other than Use Class B1(c) or Use Class B8 hereby approved and no other use (including any use within the same Use Class as defined by the Town and Country Planning Use Classes Order 1987 or any Order revoking and re-enacting that Order) shall be carried out without the formal consent of the Local Planning Authority.*" The reason the Council imposed this condition was as follows: - "*Any other use than that approved would be detrimental to the amenities to the occupiers of neighbouring dwellings.*"
8. Article 3(4) of the GPDO states that "*Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order*".
9. Both main parties have had an opportunity to comment on this and therefore no one would be prejudiced by the inclusion of this matter within the main issue.
10. Therefore, I consider the main issue in this case to be whether the proposal would be permitted development under Class MA; and if so, whether prior approval would be required as to the flooding risks in relation to the building.

Reasons

11. The appellant claims in their statutory declaration that the appeal building has been their only business premises for various commercial uses between 2006 and 2022. This includes as a workshop to prepare items for use on site. It is further stated within the submission that the appeal building has been in a 2005 approval compliant B1(c) workshop (industrial process) use since its construction.
12. Undated photographs of the building's interior and business rate bills between 2019 and 2022 provide some additional evidence in support of a commercial use. In that context, it is submitted that the appeal building ceased business on

the 30th of June 2022. As Class E uses are applicable from 1st September 2020, the appeal building would not meet the requirements of MA.1.-(2)(b).

13. Even so, on the balance of probabilities, and setting the permitted B8 use aside, some B1 use is likely to have taken place over a period of time before and after 1 September 2020. However, the evidence before me does not go far enough to demonstrate this was a continued use of the building for a B1 purpose over a 2-year period, as required by Class MA.
14. Notwithstanding this, in order to benefit from any planning permission granted by Article 3 of the GPDO 2015, the development must not be contrary to any condition on an existing planning permission; Article 3(4). This does not solely apply to conditions where certain permitted development rights have been removed.
15. Here, condition 4 attached to planning permission 05/1554/03 clearly restricts such development for no other purpose or use than those within Classes B1(c) or B8. The condition adds more by requiring formal written consent of the local planning authority for the use for any other purpose. The natural and ordinary meaning of these words is unequivocal and precise. Consequently, the words in the condition clearly demonstrate an intention to remove any rights that may be exercised through the GPDO.
16. In that respect, the appellant claims that as the use of the site commenced more than 10 years ago, they would be able to obtain a Certificate of Lawful Use for any use judged to have taken place, if necessary. In these circumstances, it is not appropriate for me to determine whether a use is lawful. This can only be formally determined by a lawful certificate application. Therefore, if the appellant considers that development has been carried out otherwise than in accordance with condition 4 of planning permission 05/1554/03, it is open to them to apply for a lawful certificate.
17. For the above reasons, I cannot be certain that the building has been used continuously for a period of 2 years as a B1 use, contrary to MA.1. Furthermore, the proposed conversion would be contrary to the condition imposed on planning permission 05/1554/03. It would therefore not comply with Article 3(4) of the Order. As such, the proposal would not constitute permitted development.

Other Matters

18. As I have concluded that the proposal is not permitted development, it is not necessary for me to make any determination on MA.2. or the prior approval matters. These prior approval matters include the effect of flooding risks in relation to the building and contamination.
19. The appeal site falls within a zone of influence of the Exe Estuary and Pebbled Heaths Special Protection Area and is therefore subject to the requirements of the 2017 Conservation of Habitat and Species Regulations. However, as I am dismissing the proposal on different grounds, there is no need to consider this matter further in this appeal. This includes the appellant's submitted Unilateral Undertaking.
20. The appellant's comments in respect of the processing of the appeal are noted. However, opportunities have been given for them to comment on the Council's

case. Therefore, this does not affect my decision which is based on the planning merits of the development within the context of the GPDO.

Conclusion

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

J Hills

INSPECTOR

