



Appeal Decision

Site visit made on 7 May 2024

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2024

Appeal Ref: APP/E5900/W/23/3333431

Second Floor, 22 Osborn Street, Tower Hamlets, London E1 6TD

- 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 Sucha Bansal against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref is PA/23/01728.
 - The development proposed is the change of use of the second floor from commercial/business/service to 1 x self-contained residential unit.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Class MA of 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).
3. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024/141 amended Part 3, including Class MA, to omit paragraph (MA.1 a), which had previously required that the building '*has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval*'.
4. As such there is no longer any such requirement in this regard. The main parties agree that the development would be permitted by Class MA having regard to the other criteria set out at Paragraph MA.1. From what I have seen, I find no reason to conclude otherwise.
5. Notwithstanding this, Paragraph MA.2 sets out that development under Class MA is permitted subject 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).
6. Paragraph MA.2 (2) requires consideration of, amongst other matters:
7. (d) '*impacts of noise from commercial premises on the intended occupiers of the development*'
(a) '*transport impacts of the development, particularly to ensure safe site access.*'

8. Whilst a reason for refusal also made reference to space standards, the Council have accepted that the application indicates the proposed dwelling as a 1 person unit and therefore the requirement for 39sqm is met. The Council is therefore of the view that it can no longer substantiate this reason for refusal, and as such, no longer wishes to contest this reason. Notwithstanding this, whilst they consider that the unit would likely be occupied by more persons, I must determine the proposal on the information before me, and take the details submitted at face value.
9. Accordingly, I consider the main issues in this case to be whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 3, Class MA of the GDPO with regard to:
 - the noise impact of the existing commercial premises on the intended occupiers of the development; and
 - the transport impacts of the development.

Reasons

Noise

10. The appeal building is located in a busy and vibrant area, mostly commercial at ground floor with a mix of uses including some residential, hotel and some office use on the upper floors. The appeal property has a restaurant operating on the ground floor. The first and second floors are commercial/office space, with a residential unit on the third floor. There are therefore numerous sources of noise that could potentially affect the living conditions of the occupiers of the proposed residential unit.
11. The proposed unit would be located on the second floor. A new high performance window to the frontage could offer improved noise insulation due to a specific thickness of the glass and glazing rebate. However, no information is provided regarding the existing noise levels emanating from the ground floor restaurant, first floor office space nor the neighbouring ground floor bar, or the effect a new window would have on these levels. As such it is not possible to ascertain whether this would be effective or if any further noise insulation is necessary. Given this uncertainty, a condition requiring compliance with the results of a formal noise assessment would not be sufficiently precise nor reasonable to meet the relevant tests in the National Planning Policy Framework (the Framework).
12. I therefore conclude that it has not been demonstrated that the impacts of noise from commercial premises on the intended occupiers of the development would be acceptable. The proposal therefore fails to satisfy condition MA.2 (2) (d) of the GDPO.

Transport Impact

13. The Council's refusal reason sets out that the development should be car free in order to promote sustainable transport. National guidance is clear that in determining a Prior Approval application such as this one, regard should be had to the Framework in so far as relevant to the subject matter of the Prior Approval, as if the application were a planning application. I have therefore had appropriate regard to Chapter 9, 'Promoting sustainable transport', contained in the Framework.

14. Paragraph 114 of the framework does set out that it should be ensured that (a) *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.*
15. However, there is no reference to car free housing within this section of the Framework. No justification is put forward, such as air quality issues or the encouragement of the use of public transport, as to why the particular circumstances of this proposal in this location mean that to promote sustainable transport the development is required to be car free.
16. Notwithstanding this, the suggested condition relating to car free housing put forward by the Council includes the reason '*To promote sustainable transport and to reduce pressure for on-street car parking*'. Even if on street parking would be difficult and could increase parking stress and/or cause obstruction, there is no information before me about whether the site is within a Controlled Parking Zone. As such, there is no certainty that either a condition or obligation would be effective in securing car free housing and would mitigate the potential harm.
17. Based on the evidence before me therefore, the development is not required to be car free in order to promote sustainable transport nor prevent undue parking pressure. There is therefore no harm demonstrated in relation to the transport impact of the development, and the proposal would satisfy condition MA.2 (2) (a) of the GDPO.

Other matters

18. Whilst not specifically referenced in the reasons for refusal, the Officer Report raises issue with the cycle storage. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further, because it could not lead me to a different decision.

Conclusion

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

B Phillips

INSPECTOR