



Appeal Decision

Site visit made on 17 June 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2024

Appeal Ref: APP/R3515/W/23/3328479

31-33 Garrick Way, Ipswich IP1 6NF

- 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 D Stephan of Sterling State Lettings Ltd against the decision of Ipswich Borough Council.
 - The application Ref is IP/23/00257/P3JPA.
 - The development proposed is Application for Prior Approval under class MA for conversion of building from Retail (Class E(a)) into one no. 1-bedroom flat and one no. 2-bedroom flat (Class C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for Application for Prior Approval under class MA for conversion of building from Retail (Class E(a)) into one no. 1-bedroom flat and one no. 2-bedroom flat (Class C3) at 31-33 Garrick Way, Ipswich IP1 6NF in accordance with the application Ref IP/23/00257/P3JPA, subject to the following conditions:
 - 1) The development authorised by this Prior Approval shall be carried out in accordance with plan number 003 (Proposed Ground Floor layout only).
 - 2) The development authorised by this Prior Approval shall not be brought into first use until details of the secure and covered cycle storage provision (including cycle storage specification) have been submitted to and agreed in writing by the local planning authority. The approved details shall be carried out in their entirety prior to the first occupation of the development and shall thereafter be retained.
 - 3) The development authorised by this Prior Approval shall not be brought into first use until details of the refuse and recycling storage facilities have been submitted to and agreed in writing by the local planning authority. The approved details shall be carried out in their entirety prior to the first occupation of the development and shall thereafter be retained.
 - 4) The development authorised by this Prior Approval shall not be brought into first use until measures to protect the occupants of the proposed ground floor flats from noise from adjacent commercial premises has been implemented, in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority

- 5) The occupation of the residential flats authorised by this Prior Approval shall not commence until the works shown on the drawings approved pursuant to the planning permission ref 22/01093/FUL dated 23 February 2023, comprising insertion of windows at ground floor level, have been completed.

Preliminary Matters

2. Article 3 (1) and Schedule 2, Part 3, Class MA of the GPDO grants planning permission, subject to certain limitations and conditions, for a change of use of a building and any land within its curtilage from a use falling within Class E of Schedule 2 to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.
3. Paragraph MA.1. (1) and (2) set out the requirements to qualify for permitted development under Class MA. These include that the use of the building fell within classes A1, A2, A3, B1, D1(a), D1(b), D2(e) and E for a continuous period of at least two years prior to the date of the application. While it is common ground that the criteria of Class MA.1 are satisfied, it is evident from the plans that the proposal includes the subdivision of the existing dwellinghouse within the upper floors of the building. In light of the principles of natural justice, the parties have been provided with an opportunity to comment on this.
4. The appellant has suggested that the upper floor dwellinghouse is associated with the commercial element at ground floor level. In order for the upper floors to fall within the requirements for Class MA, the use of the dwellinghouse must be ancillary to the commercial use of the ground floor unit. However, there is no substantive evidence before me that demonstrates such a relationship between the dwellinghouse and the retail use of the ground floor. Moreover, the plans indicate that the ground floor unit and upper floor dwellinghouse have separate accesses. Given that the upper floors could function entirely separately, and in the absence of any conclusive evidence to the contrary, I find that the upper floors would not fall within the same use as the ground floor.
5. The parties agree that the proposed development, insofar as it relates to the first and second floors of the building, can be removed from the appeal scheme to allow for only the ground floor element to be considered. The appellant has provided an amended plan (Ref 003) in this respect. I have given due consideration to guidance in the 'Procedural Guide: Planning Appeals - England' (2024)¹, and any relevant case law referred to in the guidance, which addressed the matter of amended plans being submitted with an appeal, along with other case law, in deciding whether to accept the revised plan.
6. As the upper floors already provide residential accommodation, I consider the amended proposal (excluding change of use of the upper floors), is essentially the same as the scheme that was considered by the Council. Therefore, the appeal process is not being used to evolve the scheme. Furthermore, the main parties have had the opportunity to comment on this approach. As such I am

¹ Section 16 of the *Procedural Guide Planning Appeals – England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

satisfied that the revisions do not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced.

7. Accordingly, I have amended the description of development in the heading and decision above, to refer only to change of use to one no. 1-bedroom flat and one no. 2-bedroom flat (Class C3), instead of to four residential dwellinghouses. The Council consider that the reasons for refusal remain applicable and I have determined the appeal on this basis.

Main Issues

8. The prior approval matters for Class MA includes, amongst other things, the transport impacts of the development, particularly to ensure safe site access and the provision of adequate natural light in all habitable rooms of the dwellinghouses.
9. There is no dispute that the other criteria of Class MA are satisfied. As such, there is no need to give them further consideration within this decision.
10. Therefore, the main issues are whether:
 - the transport impacts of the development are acceptable, particularly to ensure safe site access; and
 - whether adequate natural light would be provided to all habitable rooms of the dwellinghouses.

Reasons

Transport

11. The appeal site is a building within a parade consisting of commercial units at ground floor level. To the front of the parade are marked parking bays. The parking bays and roads in the area, including Garrick Way, Burke Road and Macaulay Road, are not subject to any parking restrictions.
12. The Council has stated that to comply with its parking standards set out within the Suffolk Guidance for Parking (2019), a minimum of one space for a one-bedroom dwellinghouse and two spaces for a two-bedroom dwellinghouse should be provided on site. Whilst this would have required 6 parking spaces for the proposal as originally submitted, the proposal before me for two ground floor flats would result in a requirement for 3 parking spaces in line with that guidance.
13. Whereas, the proposal would not include any additional parking. Nonetheless, the appellant indicates that if future occupants had a car, there would be sufficient space for on-street parking in the locality. A Parking Assessment of the marked bays and on-street parking in the area (dated 21 March 2023) shows that there were a significant number of parking spaces on both survey dates. The Council's screenshots of Garrick Way at four separate points in time show that while the bays and road were busy, there was spare capacity both within the marked bays and on-street. Although only a snapshot in time, I observed during my mid-morning, midweek site visit, that there was a considerable amount of on-street parking spaces available within the marked bays and the surrounding streets. Consequently, no robust evidence is before me to indicate that on-street parking is under undue stress and causes congestion within the road or has resulted in highway safety issues.

14. As such, I am satisfied that future occupants would not need to park a significant distance from the site. This differs from the appeal that I have been referred to at Cromer Road, Ipswich, where on-street parking was constrained, and availability was limited. Moreover, no substantive evidence has been presented to demonstrate that the likely small number of additional vehicles that would be associated with the development would result in unacceptable transport impacts or an unsafe access to the site.
15. The site is located within walking and cycling distance of everyday services and facilities, including bus stops. While future occupants may have a private vehicle, the location of the site provides a reasonable alternative for future occupants to access facilities and services by other means. As such, the proposal would support the Framework's objective relating to sustainable transport.
16. Therefore, I conclude that the proposal would not have an unacceptable transport impact, including in relation to highway safety or the flow of traffic in the locality, and that safe access would be provided. As such the proposal would satisfy condition MA.2. (2) (a) of the GDPO.

Natural light

17. Condition MA.2. (2) (f) of Class MA requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. The term 'habitable rooms' is defined in Part 3, paragraph X of the GPDO as meaning '*any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms*'.
18. The proposed flats would be served by existing window openings. However, the orientation of the existing openings and the proximity of development to the side of the site would restrict the amount of natural light to the bedroom of Flat 1. In addition, the area that would be bedroom 1 in Flat 2 is not currently served by a window opening and the bedroom would not therefore receive adequate natural light.
19. Nonetheless, planning permission has been granted under reference 22/01093/FUL, that would include an extension at ground floor level and the insertion of windows. This would ensure that the bedroom of Flat 1 would be provided with five windows, including two facing to the rear of the site, a larger window to the kitchen/living room of Flat 2 and a new window within bedroom 1 for Flat 2. On implementation of these works, the size, orientation and number of windows would secure adequate natural light within the proposed habitable rooms of Flats 1 and 2.
20. A condition requiring that the appeal scheme is not occupied until those windows have been inserted, would ensure that adequate natural light would be provided. There is nothing in paragraph W (13) of the Order, or in the PPG, to prevent the imposition of a negatively worded condition, relating to occupation. The condition would be also reasonably related to the subject matter of the appeal.
21. I conclude that the proposal would provide adequate natural light to all habitable rooms of the dwellinghouses. As such the proposal would satisfy condition MA.2. (2) (f) of the GDPO.

Other Matters

22. Concern has been raised in respect of the condition of the rear access road, including in regard to fly tipping and antisocial behaviour. Nevertheless, there is no substantive evidence before me to indicate that the road would be unsuitable for pedestrians or cycle users, or that the proposal would cause greater deterioration of the access road relative to the existing use.
23. The appeal site is located within the Zone of Influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and the Stour and Orwell Estuaries Ramsar site. It is therefore important to note that Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75- 78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made after 30 November 2017 that development which is likely to have a significant effect on a European site, and is not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of approval under Regulation 77.
24. 15. Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat such as the SPA. Accordingly, such development cannot be lawfully begun until the developer has made a Regulation 77 application and the competent authority is satisfied that the development would have no adverse effect on the integrity of the habitat. The Regulation 77 application should be made to the local planning authority in the first instance.

Conditions

25. Paragraph W (13) of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
26. Development under Class MA is permitted subject to conditions at Paragraphs MA.2. (5) and (6) which include that the development must be completed within a period of 3 years starting with the prior approval date; and that any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.
27. The Council has suggested three conditions it would wish to see imposed should prior approval be granted. As Paragraph MA.2. (5) of the GPDO stipulates that the development shall be completed within a period of 3 years, a separate condition is not required in this regard. The provisions at Paragraph W (12) require that development must be carried out in accordance with the approved details, however in the interest of clarity and certainty I have attached a condition setting out the approved plan.
28. Conditions relating to cycle storage and refuse and recycling facilities are necessary to ensure that the transport impacts of the development are acceptable. I have amended the suggested wording for clarity.

29. The submitted noise impact assessment by Create Consulting Engineers Limited (March 2023), made recommendations for noise mitigation in order to provide adequate protection for future occupants of the proposal with respect to noise from adjacent commercial premises. Therefore, a condition is necessary to require approval of such details and their installation prior to first use of the proposed ground floor flats. This appropriate given condition MA.2.(d) of the GPDO on this matter.
30. I have included a condition to ensure that the scheme would not be occupied prior to the completion of the development permitted under application reference 22/01093/FUL. This is to ensure that adequate natural light would be provided to all habitable rooms. The main parties have confirmed their agreement to the above conditions.

Conclusion

31. For the reasons given above the appeal should be allowed and prior approval is granted.

J Pearce

INSPECTOR