
Appeal Decision

Site visit made on 3 September 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/D0121/W/24/3339053

Unit A, Estune Business Park, Wild Country Lane, Long Ashton BS41 9FH

- 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 Flower & Hayes Developments Ltd against the decision of North Somerset Council.
- The application Ref is 23/P/2251/CM2A.
- The development proposed is change of use of ground floor and first floor offices (Class E) to residential use (Class C3), creating 12 No new flats.

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) for change of use of ground floor and first floor offices (Class E) to residential use (Class C3), creating 12 No new flats at Unit A, Estune Business Park, Wild Country Lane, Long Ashton BS41 9FH in accordance with the application 23/P/2251/CM2A and the details submitted with it.

Background and Main Issue

2. This appeal relates to the ground and first floor of a three storey building. There is no dispute between the main parties that the building has recently and last been occupied as offices although the building was vacant at the time of my visit. The offices were granted outline planning permission under ref: 02/P/1036/O¹ ('the outline permission').
3. 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 Order') permits the change of use from a building used as offices (Use Class E) to dwellinghouses (Use Class C3) subject to limitations set out in MA.1. The Council advise that those limitations are satisfied. Development under Class MA is permitted subject to conditions set out in

¹ Mixed development and redevelopment comprising commercial development within Class B1 (approx. 4588 sqm); residential (approx. 342 units) including barn conversion, sheltered and affordable housing; public open space including playing fields; retention of the Cider House for community use; details of new accesses to Weston Road (north and south) and alteration of existing access to Wild Country Lane (outline)

MA.2. This includes the requirement to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to transport impacts, contamination risks, flooding risks, fire risk, noise impacts, provision of natural light and impacts on intended occupiers of the development. The Council has no concerns in respect of these matters, and I have no evidence to justify reaching a different conclusion. Accordingly, I am satisfied that the requirements of MA.1 and MA.2 of the Order are satisfied.

4. However, the Council's concern in this appeal is that a restrictive condition on the outline permission prevents the proposal from comprising permitted development. The main issue therefore in this appeal is whether the proposed development is permitted development under Schedule 2, Part 3, Class MA of the Order having particular regard to Condition 10 of the outline permission.

Reasons

5. Condition 10 of the outline permission states: The employment uses on the employment land permitted by this development shall be only for uses falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987. The reason for the condition was to protect the amenities of future and existing residents, and in accordance with Policy ENV/1 of the North Somerset Local Plan.
6. The Council's case is that the appeal proposal does not constitute development permitted under Schedule 2, Part 3, Class MA of the Order because Article 3 (4) of the Order 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'.
7. The Council's case is that Condition 10 on the outline permission limits the use of the building to employment uses falling within Class B1 (now Class E) and prevents any other future use. Consequently, a residential use would contravene Article 3 (4) and the proposal cannot benefit from permitted development as a result. In this respect, they have drawn my attention to an appeal decision².
8. However, in that appeal the condition in question stated, 'The building hereby permitted shall be used solely for the storage of materials and equipment used in connection with 'Parkhorn' only and for no other purpose'. It is clear on reading the condition that it specified the particular use which was permitted for the building through the inclusion of the word 'solely' and also prevented any other use by the inclusion of the words 'and for no other purpose'. Those words do not appear in Condition 10 of the outline permission.
9. The Council say that a planning condition does not need further qualifying text if its intent is precise. In this respect, they have referred me to the word 'only' in Condition 10 of the outline permission which they say, means that nothing else can be permitted.

² Appeal ref: APP/J1860/W/22/3305747 Parkhorn Farm, Upper Sapey, Herefordshire HR7 4PX

10. However, looking at the condition in its whole context, the use of the word 'only' does not exclude all other uses. In this instance, it merely specifies what employment uses were permitted on the land identified as employment land.
11. When read together with its reason, Condition 10 clearly intended to ensure that employment development at the site did not adversely affect the amenities of future and existing residents. Accordingly, 'only' employment development falling within Class B1 (now Class E) would achieve this. This is because that Use Class specifically encompasses employment uses which can be carried out in a residential area without detriment to its amenity.
12. The wording of the condition does not prevent other non-employment uses from taking place at the site particularly those which would not be harmful to the amenity of residents. For these reasons, I am satisfied that there is no conflict with Article 3(4) of the Order.
13. The above issues were raised in a similar case at the appeal site³ and whilst I have determined this appeal on the facts of this particular case, I note the Inspector is that case arrived at a similar conclusion on the main issue.

Other Matters

14. I note the comments received from an interested party. However, the issues they raise are not matters which fall to be considered as part of this appeal.

Conclusion

15. For the reasons set out above, the proposed development is permitted development under Schedule 2, Part 3, Class MA of the Order and the appeal is therefore allowed.

Alison Fish

INSPECTOR

³ Appeal Ref: APP/D0121/W/23/3328409 relating to second floor of Unit A, Estune Business Park, Wild Country Lane, Long Ashton BS41 9FH