

Appeal Decision

Site visit made on 3 September 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/D0121/W/24/3343906

2 North Lane, Weston-super-Mare, North Somerset BS23 1QR

- 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 GPDO).
 - The appeal is made by Mr Gauntlett against the decision of North Somerset Council.
 - The application Ref is 23/P/1607/CM2A.
 - The development proposed is prior approval for the change of use of existing Class E property to 2no dwellings (Use Class C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by North Somerset Council against Mr Gauntlett. This application is the subject of a separate Decision.

Preliminary Matter

3. I have also dealt with another appeal (Ref: APP/D0121/W/24/3344697) on this site. That appeal is the subject of a separate decision.

Background and Main Issue

4. Article 3(4) (Permitted Development) of the GPDO states that nothing in the order permits development contrary to any condition imposed on any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order. Article 3(9A) of the GPDO states that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse – (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015 (NDSS). These are matters which are referred to in the Council's reasons for refusal.
5. 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). In light of

changes to the GPDO that came into force in March 2024, the development complies with the requirements set out in Paragraph MA.1 of Class MA.

6. 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 matters set out in paragraphs MA.2(2). This includes matters (c) regarding flooding risks in relation to the building, (d) regarding impacts of noise from commercial premises on the intended occupiers of the development, and (f) regarding the provision of adequate natural light in all habitable rooms of the dwellinghouse. These matters are also referred to in the reasons for refusal.
7. It follows from the above that the main issue is whether or not the proposal benefits from the provisions of Schedule 2, Part 6, Class A of the GPDO.

Reasons

8. With regard to whether the proposal would be contrary to a condition imposed on any planning permission, I have found in my other decision referenced above¹ that the condition restricting the use of the building to Class E(g)(i) was not reasonable or necessary. In light of this, there is no condition on the relevant planning permission restricting its use and this would not prevent the proposal benefitting from Class MA of the GPDO. I will return to the presence of an almost identical planning permission² with a similar condition imposed below.
9. Regardless of any condition restricting the use of the building, condition number 7 to the planning permission granted under reference 24/P/0126/FUL, and condition number 6 to the planning permission granted under reference 23/P/1242/FUL prevent the use of the building until windows at the first floor level on the north and south elevations have been provided with obscure glazing. Given that the plans accompanying the appeal do not show these windows as being obscure glazed, and they were not obscure glazed at the time of my site visit, the appeal proposal is contrary to a condition imposed on a planning permission granted or deemed to be granted. As a result, this prevents the proposal from benefitting from Class MA of the GPDO.
10. Turning to compliance with the NDSS, I note from paragraph 10.d. that in order to provide two bedspaces, the room has to have a floor area of at least 11.5m². From the plans before me, and as stated by the appellant, both bedrooms fall under this size and as such are only suitable for one bedspace and this is the case despite one of the bedrooms being annotated with a double bed with the unit also benefitting from a 3-seater sofa and dining table with 2 chairs. As a result, the appeal proposal seeks the provision of two 1 bedroom, 1 bedspace/person, 2-storey dwellings.
11. In relation to this, Table 1 of the NDSS does not provide a minimum gross internal floor area for such a property. In the absence of a minimum gross internal floor area for a 1 bedroom, 1 bed space/person 2-storey dwelling, I cannot conclude that the proposal is contrary to such a standard.

¹ APP/D0121/W/24/3344697

² 23/P/1242/FUL

12. However, in addition to minimum gross internal floor areas, the NDSS at paragraph 10.i. requires that the minimum floor to ceiling height is 2.3m for at least 75% of the Gross Internal Area.
13. While I note the appellants stated measurements for the floor to ceiling heights and that the existing floor to ceiling heights would be altered, I also note the evidence from the Council with regard to the stated heights not reflecting the scaled drawings, particularly given the need to take into account an allowance for the construction of the ceiling and floor between each level. In light of this, and even if I were to accept that the unit at the front of the building (the West Side) would comply with the 2.3m ceiling height standard given the presence of the pitched roof over this area, I cannot be certain that the necessary ceiling heights for the rear unit would be achieved for 75% of the Gross Internal Area for this unit.
14. As a result of the above, I cannot conclude that the proposal benefits from the provisions of Schedule 2, Part 6, Class MA of the GPDO.
15. Even though I cannot conclude that the proposal benefits from the provision of Class MA of the GPDO, I will for completeness address the other prior approval matters raised by the Council with regard to flood risk, noise, and natural light. In relation to these matters, evidence has been submitted by the appellant addressing these prior approval matters.
16. With regard to flood risk, there is no dispute between the parties that the site is at risk of flooding. I have no reason to disagree. The flood risk information submitted by the appellant does not contain specific details in relation to the ground level of the appeal site or detailed information regarding any flood defences protecting the site. Although I acknowledge from my site visit that the site is relatively level and note reference to the presence of flood defences comprising the Weston Sea Front Defences, I do not have any other specific or detailed information to be able to conclude that the building would not be at risk of flooding. I acknowledge reference to other decisions at 16A Chesham Road South³ and within the Weston-super-Mare Town Centre Regeneration area⁴ where planning permission was granted within areas at risk of flooding but given that they are a fair distance from the site and were accompanied by details regarding flood risk and flood defences, they are not directly comparable to this appeal proposal.
17. I now turn to impacts of noise from commercial premises on the intended occupiers of the development. In relation to this I note the contents of the Environmental Noise Assessment⁵ regarding the need for windows to habitable rooms to be sealed airtight to control external noise with ventilation provided via attenuated means including a mechanical ventilation and heat recovery (MVHR) system to achieve acceptable internal noise levels.
18. While the submission of a suitable MVHR system could be secured by a condition should I allow the appeal, I note that the Planning Practice Guidance (PPG)⁶ states that if the proposed mitigation relies on windows

³ 23/P/2189/FUL

⁴ 23/P/2682/FUL

⁵ 25 July 2023 by Acoustic Consultants Ltd

⁶ Paragraph: 006 Reference ID:30-006-20190722

being kept closed most of the time, this may affect living conditions. While it is not uncommon for windows to be closed at times, I find that it would be unreasonable and unrealistic to compel future occupiers of the dwellings to keep windows to habitable windows closed, particularly when the weather is good, or they wish to benefit from fresh air during the day or night. As a result, I find that the impacts of noise from commercial premises nearby on the intended occupiers of the development would be unacceptable.

19. With regard to natural light and given that the proposed kitchens do not contain separate seating areas, the habitable rooms comprise the first floor living rooms and bedrooms. I have had regard to the Sunlight Assessments UK Scheme Performance for the appeal site and note the findings of the Technical Analysis in Appendix 2. However, given that the report states in its Introduction that the Sources of Information used in compiling the report comprise an OS Map and the proposed drawings, I cannot be sure that the report's findings take into account the height and very close relationship of surrounding buildings and any light reduction that may result.
20. Furthermore, I have not been provided with reasons why the assumed surface reflectance values exceed the default values set out in the BRE Site Layout for Planning and Daylight guide and the assessment has been carried out in the absence of obscure glazing to the windows that may reduce the levels of light transmission. As a result, I cannot conclude that the proposal would benefit from the provision of adequate natural light in all habitable rooms of the dwellinghouses.
21. In conclusion, it follows from the above that the development does not benefit from the provisions of Schedule 2, Part 6, Class A of the GDPO.

Other Matters

22. Even if the appellant were to rely on the presence of the almost identical planning permission⁷ referenced above, provided obscure glazing and could demonstrate the required ceiling heights, given my findings above in relation to the prior approval matters, the proposal would still not benefit from the provisions of Schedule 2, Part 6, Class MA of the GDPO and as such this would not lead me to a different decision.
23. As the development does not benefit from the provisions of Schedule 2, Part 6, Class A of the GDPO, I do not need to go on to consider matters related to the supply of deliverable housing sites.

Conclusion

24. For the reasons given above the appeal should be dismissed.

C Rose

INSPECTOR

⁷ 23/P/1242/FUL