

Appeal Decision

Site visit made on 11 September 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/G2625/W/24/3336718

2 - 2A Ardney Rise, Norwich, Norfolk NR3 3QH

- 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 Sue Gomes against the decision of Norwich City Council.
 - The application Ref is 23/01386/PA.
 - The development proposed is to convert the ground floor into two flats and the first floor into one flat, as per the submitted plans.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. 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), planning permission is granted for the change of use from commercial, business and service (use class E) to dwellinghouses (use class C3) subject to certain limitations and conditions. Whilst the plans show operational development, permission cannot be granted for works that fall outside the remit of the prior approval procedure.
3. There are four reasons for refusal including one relating to cycle and refuse storage. However, the matters which can be considered under the provisions of Part 3, Class MA are limited to those which are listed in the GPDO, of which, refuse and cycle storage are not specifically listed. Nevertheless, as both these matters have implications for transport I have considered them under provisions of Class MA Condition MA.2(2)(a).
4. There is no statutory obligation to decide a prior approval appeal on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 as the principle of the development is established through the grant of permission by the GPDO. As such, the provisions of Schedule 2, Part 3, Class MA of the GPDO (Class MA) do not require regard to be had to the development plan. Nevertheless, the development plan policies may still be relevant in prior approval appeals, but only insofar as they relate to the relevant matters, and only as evidence to support, rather than being the basis of, the planning judgement to be made.

5. Therefore, based on the above, the main issues are whether:

- The proposed development would comply with the limitations and conditions of the permitted development right relating to the provision of adequate natural light in all habitable rooms in accordance with the provisions of Class MA Condition MA.2(2)(f) of the GPDO;
- The proposed development would comply with the limitations and conditions of the permitted development right relating to the transport impact of the development taking particular account of safe access to the site in accordance with the provisions of Class MA Condition MA.2(2)(a); and
- The location or siting of the building makes it otherwise impractical or undesirable for the building to change from an office use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, with particular reference to its effect on protected species.

Reasons

Adequate Natural Light

6. The appeal premises are a two-storey building formerly used as offices and are located within a predominantly residential area. The proposal involves the change of use of the ground floor to two flats and the upper floor to one flat.
7. 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*'. Condition MA.2(2)(f) of Class MA requires the provision of adequate natural light in all habitable rooms of the dwellinghouses (my emphasis).
8. From my site visit, I found that many of the habitable rooms proposed would experience satisfactory levels of daylight due to large windows on the front elevation of the property. However, bedrooms on the ground floor would be served only by glazed panels in doors to the side and rear elevations of the building. The appellant describes the doors as fully glazed, However, photographs supplied and observations on site, confirm that they are only partially glazed.
9. The GPDO does not define what level of daylight is considered adequate for the purposes of Class MA development. However, I have no substantive evidence before me, for instance, by way of a daylight and sunlight assessment to demonstrate that adequate natural light at all times of the day and year would be provided to both the ground floor bedrooms. Given the limited size of the openings, their orientation and proximity to other external walls and the site boundary, I am of the view that the bedrooms on the ground floor would be gloomy for their occupiers. Even though they are bedrooms, it is not unreasonable to expect that future occupiers would spend a significant amount of time during the day using these rooms.

10. For these reasons, I conclude that the proposals would not provide adequate natural light in all habitable rooms of the dwellinghouses and would therefore not accord with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA.

Transport Related Considerations

11. Parking would be provided to the front and the left-hand side of the building. The proposed flats would be accessed from the front and right-hand side of the building. Two of the spaces would be parallel to the front elevation of the building. Although the Highways Authority have indicated that the arrangement is not ideal, I have not been presented with any substantive or compelling evidence that the arrangement would result in a danger to highway safety, in particular to pedestrian safety, especially given the proximity of the appeal site to other residential properties where pedestrians would be generally aware that vehicles are likely to be crossing the footway to access driveways and visibility is not impeded. Consequently, from the information before me I have no reason to consider that either pedestrian or vehicular access to the appeal site would be unsafe.
12. The submitted drawings indicate the proposed locations of domestic bin storage. The Council is concerned that one of the locations to the rear of the site for Flat 3 is constrained by a narrow pathway. The submitted evidence does not suggest that bin storage would be either insufficient or would result in the storage of waste or bins outside the appeal site boundary. Although it is not indicated how waste collection arrangements are proposed, if I was allowing the appeal, I can see no reason why refuse storage facilities or collection arrangements could not be secured through an appropriately worded planning condition.
13. Cycle parking is indicated to the side and rear of the building within areas designated for outside space for each flat. Although no details of the type of storage facility are provided, if I was allowing the appeal the precise details in terms of location and specification of the storage facilities could be secured through a planning condition. As a result, there would be no adverse transport impacts as a result of the development.
14. I therefore conclude that the proposals would not conflict with Class MA Condition M.2(1)(a) in that the transport impacts of the development taking particular account of safe access would not be unacceptable.

Integrity of European Sites

15. The appeal site lies within the catchment of the River Yare and is therefore functionally linked to the Broads Special Area of Conservation (SAC) and Special Protection Area (SPA), a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations), and in the Zone of Influence (ZoI) of The Broads SAC and SPA.
16. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Protected Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Protected Habitats site that requires mitigation.

17. The proposal would result in the net increase of three dwellings and therefore has the potential to lead to an increase in additional nutrients reaching the SAC due to the implications of foul and surface water drainage systems and in the absence of mitigation measures, the proposal would likely have a significant adverse effect on the integrity of the SAC.
18. Article 3(1) of the GPDO imposes a condition requiring that development which is likely to have a significant effect on a Habitats Site must not begin until the developer has received written notification of the approval of the local planning authority under Regulation 77 of the Conservation of Habitats and Species Regulations 2017. Although the appellant indicates that a scheme to provide credits is being developed, I have no information before me to indicate that the appellant has secured credits under the scheme. However, since I am dismissing the appeal for other reasons there is no need for me to consider this matter further.

Conclusion

19. For the reasons set out above, I conclude that the appeal is dismissed.

K L Robbie

INSPECTOR