

Appeal Decision

Site visit made on 13 August 2024

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/V5570/W/24/3344708

16-33 Rheidol Mews, Islington, London N1 8NU

- 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 Peter Kenny of Kenny Properties Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref is P2023/2857/PRA.
 - The development proposed is change of use of vacant class E offices to 6 x dwellings under Class MA of the GPDO 2015 (as amended).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The above site address is taken from the application form; however, the appeal form and decision notice refer to the site as 16-18 Rheidol Mews. Whilst it is unclear from the location plan which units relate to each specific number, it is clear which units were considered by the Council at the time of the application, and that both parties refer to the same units. As such, I have dealt with the Appeal based on the redline which includes Units 1 to 3 and Unit 6 and excludes Units 4 and 5.
3. It was apparent that construction on site had commenced. The appellant contends that this relates to their planning approval Ref P2019/1262/FUL. Whilst the units subject to this appeal had what appeared to be replacement windows, roof lights and internal staircases installed, no use had commenced in any of the units subject to this appeal. Furthermore, I do not have the specific details of the previous planning permission to compare against. Notwithstanding this, any breaches of planning control do not fall within my assessment of the appeal scheme, which has been decided on the basis of the existing and proposed plans that were submitted with the planning application and considered and consulted upon by the Council.

Background and Main Issues

4. Class MA of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO)

grants planning permission for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 of the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order, subject to a number of requirements and conditions.

5. Paragraph MA.1(1) sets out that development is not permitted by Class MA if, (b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval.
6. The GPDO 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, amongst other matters, (d) impacts of noise from commercial premises on the intended occupiers of the development; e) where - (i) the building is located in a conservation area, and (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area; and (f) the provision of adequate natural light in all habitable rooms. This is effectively a 2-stage process and it is necessary in the first instance to determine whether or not the proposal is permitted development.
7. The GPDO also sets out within Section 3 – Permitted Development, paragraph 3. (9A), amongst other matters, 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.
8. Accordingly, the main issues are:
 - whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), and if so,
 - whether the new dwelling house(s) comply with the Nationally Described Space Standards, and if so,
 - whether prior approval should be granted having particular regard to the following: a) impacts of noise from commercial premises on the intended occupiers of the development; b) the effect of the proposed development on the character and sustainability of the conservation area; and c) the provision of adequate natural light in all habitable rooms.

Reasons

Whether Class MA

9. The appellant claims that the appeal premises is Class E and is reliant upon the planning approval Ref P2019/1262/FUL, for which I have been provided with the decision notice. The description on this application is clear that permission was granted for the partial demolition of No's 16 - 18, 21, 22,

and 29-31 and replacement with new buildings and renovation works to those buildings within Rheidol Mews.

10. The Council does not dispute that some of the units subject to the appeal are in Class E, however, it claims that its Business Rates records show some units are store and premises and, as such, fall within Use Class B8. This assertion follows on from the appellant's previous planning application Ref P2020/1731/FUL which has a site address of 16-33 Rheidol Mews, and relates to the 'Change of use from a mix of previous uses to Class C3 Residential'.
11. I have been told that the Council's Strategic Development Management Policies, September 2023, defines Business floorspace/ buildings/ development/ uses as "Office, research and development and light industrial activities as well as industrial uses B2 general industrial and B8 storage and distribution, and Sui Generis industrial uses". As such, even if the previous application was refused due to an unjustified loss of business floor space, I agree with the Council that reference to business floor space does not confirm that all units subject to that planning application were Class E.
12. Even if the works associated with permission Ref P2019/1262/FUL are near completion, the units subject to this appeal were empty, with no obvious use implemented at the time of my site visit. Furthermore, previous planning approval does not have the same status as a certificate of lawfulness.
13. The appellant contends that the units highlighted by the Council as storage are ancillary, however, this has not been supported by any substantive evidence. I therefore have no evidence to demonstrate that all buildings outlined in red fall within Class E.
14. The onus is upon the appellant to demonstrate that the requirements of Class MA have been met and the Council is empowered to refuse the application. There is sufficient doubt in my mind to confirm that the units, subject to this appeal, are in Class E use and as such, I am not satisfied that the evidential bar has been met.
15. For the reasons set out above and based on the information provided and observations on site I am not certain that in this case, Class E use has occurred within the whole of the units subject to this appeal to enable the 2-year continuous use requirement to be met.
16. Consequently, I conclude that the proposal is not permitted development and does not comply with paragraph MA.1 (1) (b) Class MA of the GPDO.

Nationally Described Space Standards (NDSS)

17. The NDSS provide minimum gross internal floor areas (GIA) and storage (sqm) for dwellings according to the number of bed spaces, persons and storeys. The proposed development would provide a total of six units and comprise of two dwellings within Units 1 and 2. Nos 1 and 1a would each comprise of 1 bed/ 2 persons and Nos 2 and 2a would each comprise of 2 bed/ 4 persons, and one 2 bed/4 person dwelling within each of Units 3 and 6. Accommodation within each unit would be spread across two floors.

18. The appellant contends that all units comply with the NDSS and has provided the total floor areas of each unit within their Statement. Whilst most of the units meet the NDSS, Unit 2 is stated as measuring approximately 72 sqm. Even if the proposal would provide double bedrooms, and the bedrooms comply with the minimum standards with regard to width, floor area, storage and ceiling height, it would consist of two floors of accommodation. The GIA for a two-storey 2 bed/ 4 person unit needs to be 79 sqm. In this case, the appellant has applied the incorrect space standards.
19. For the above reasons, I find that the requirements of Schedule 2 have not been met and the proposed development as a whole would not comply with the NDSS.
20. As considerations in relation to these prior approval matters are a follow-on condition stage under paragraph MA.2, they can only apply if the development is otherwise permitted development. As the proposal would fail to constitute permitted development, it is not necessary to consider whether the conditions set out in MA.2(2) would be met.

Conclusion

21. For the reasons given above, the appeal is dismissed.

L Clark

INSPECTOR