



Appeal Decision

Site visit made on 29 October 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2024

Appeal Ref: APP/M1595/W/24/3341287

10-12 Cromwell Road, Grays, Thurrock RM17 5HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to 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 Kamran Ijaz of Old Street Holding Ltd against the decision of Thurrock Council.
 - The application Ref is 23/01348/PAOFFR.
 - The development proposed is described as "ground floor change of use from commercial to 4 dwellings".
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Decision

1. The appeal is allowed and prior approval is deemed to be 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 the ground floor change of use from commercial to 4 dwellings at 10-12 Cromwell Road, Grays, Thurrock RM17 5HF in accordance with the application ref 23/01348/PAOFFR and drawing nos. 1, 2, 3 and the location and block plans.

Background and Main Issue

2. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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) of the Use Classes Order (UCO) to a use falling within Class C3 (dwellinghouses) of the UCO.
3. Development is permitted under Class MA subject to the limitations set out in paragraph MA.1 and the conditions set out in paragraph MA.2, which include matters in respect of which the developer must apply to the local planning authority (LPA) for prior approval.
4. The Council refused the prior approval on the basis that it includes works which would not accord with Class MA and does not meet the condition in paragraph MA.2(2)(a) in relation to the transport impacts of the development. Its third reason for refusal relates to the adverse impact of the dwelling on European designated nature conservation sites and I return to this issue later.
5. Paragraph W of the GPDO sets out the procedure for prior approval under Part 3. Paragraph W(11) states that development must not begin before the expiry of 56 days following the date on which the application was received by the LPA without the authority notifying as to whether prior approval is given or

refused. In the absence of written notice under this paragraph, prior approval is deemed to have been granted. The appellant claims that the 56 days had expired before the notification of refusal was issued.

6. Therefore, the main issue in this appeal is whether prior approval is deemed to have been granted by reason of the timing of the Council's decision. If the decision has been made within the statutory timeframes, I would then consider whether the appeal scheme would fall within the development permitted by Class MA and the transport impacts of the development.

Reasons

7. The Council received the prior approval application on 17 November 2023 and the 56 day period expired on 12 January 2024. The decision notice is dated 29 February 2024. The notice was not served within the timescale required under paragraph W(11) and therefore prior approval is deemed to have been granted.
8. As the Council has not served notice within the statutory period, I cannot address whether the appeal scheme would fall within the development permitted by Class MA, or the transport impacts of the development.

Other Matters

9. Notwithstanding my findings in respect of the timing of the Council's decision, the development could only lawfully proceed if it is in accordance with the submitted plans and is in fact permitted development having regard to the relevant conditions and limitations imposed on the planning permission granted by the GPDO. The Council contends that the proposed building works go beyond what is allowed by Class MA of the GPDO. Whether the proposed development is permitted by the GPDO would be a matter for the Council and appellant to resolve.
10. The appeal site is within the zone of influence of the Thames Estuary and Marshes Special Protection Area (SPA) and without mitigation is likely to have a significant effect on the SPA. Article 3(1) of the GPDO grants planning permission for Schedule 2 permitted development subject to Regulations 75-78 of the Habitats Regulations¹. Regulation 75 states that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017 that development which is likely to have a significant effect on a European site must not begin until the developer has received written notification of approval from the LPA under Regulation 77.
11. Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European habitats site such as the Thames Estuary and Marshes SPA. Accordingly, such development cannot be lawfully begun until the developer has made a Regulation 77 application and the LPA is satisfied that the development would not adversely affect the integrity of the European habitats site.
12. A neighbouring occupier is concerned about building works taking place at anti-social hours, but the Council has legal duties in respect of noise nuisance.

¹ The Conservation of Habitats and Species Regulations 2017

Conditions

13. In addition to the pre-commencement condition imposed by Article 3(1) in relation to European habitats sites referred to above, development under Class MA is permitted subject to conditions at Paragraphs MA.2(5) and (6). Paragraph MA.2(5) requires that the development must be completed within a period of 3 years starting with the prior approval date. Paragraph MA.2(6) requires 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 UCO and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse. The Council has not suggested any additional conditions.

Conclusion

14. For the reasons given above, the appeal should be allowed and prior approval is deemed to be granted.

A Wright

INSPECTOR