



Appeal Decision

Site visit made on 6 November 2024

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/B5480/W/24/3336435

1 Writtle Walk, Rainham, Havering RM13 7XB

- 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 Asad Chaudhry of Interface Properties against the decision of the Council of the London Borough of Havering.
 - The application Ref is J0025.23.
 - The development proposed is change of use existing office (Class-E) unit (first & second floor) into 1 no. (1 bedroom) self contained flat (Class-C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The erection of first and second floors at this property, which was granted planning permission under LPA ref P0850.18, included a condition relating to its use: Notwithstanding the provisions of the General Permitted Development Order (or any order revoking and re-enacting that Order with or without modification), the proposed first and second floor extensions hereby permitted must be used only for activities ancillary to the ground floor commercial unit at 1 Writtle Walk.
3. Permission was subsequently granted in August 2023 for the removal of that condition (LPA ref P0906.23) with a new condition relating to its use: The use of the first floor and second floor of the subject building shall be used only as a single commercial unit and shall not be split or separated without prior consent in writing of the Local Planning Authority. Further to the above and notwithstanding the details shown on the approved plans the two units hereby permitted shall only be used for activities pursuant to following subsections of the "E" grouping of the Town and Country Planning (Use Classes) Order 1987 (as amended): E(c)(i), E(c)(ii), E(c)(iii), E(g)(i), E(g)(ii) There shall at no time be any other activities outside of the above unless otherwise agreed in writing with the Local Planning Authority.
4. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024 omits Class MA paragraph MA.1(1)(a) which stated that development was not permitted by Class MA unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. This came into force on 5th March 2024, after the decision was issued. However, it was before the start date for the appeal and the parties have had the opportunity to comment on this

matter. In any case I am required to determine prior approval appeals with regard to the Order as in force at the date of the appeal decision and not the date of the LPA's decision.

Main Issues

5. This appeal relates to an application for prior approval. However, there is dispute between the main parties as to whether the development would be permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) subject to compliance with all relevant limitations and conditions.
6. Therefore, the main issues are whether the proposed development would be granted planning permission by Schedule 2, Part 3, Class MA of the GPDO, with particular regard to:
 - Whether the development would be contrary to a condition imposed on a planning permission.
 - Whether the dwellinghouse would comply with the nationally described space standard.
 - Whether the building fell within an E class use for a continuous period of at least 2 years prior to the date of the application for prior approval.

Reasons

Whether the development would be contrary to a condition

7. The appellant's appeal statement appears to claim that the current use is operating under the August 2023 consent. A condition of this consent clearly restricts the property to uses falling within the specific E class uses and restricts future development by requiring that there shall at no time be any other activities outside of the above unless otherwise agreed in writing with the Local Planning Authority. Even if the use is not operating under the 2023 consent, the 2018 planning permission explicitly restricts future development under the GPDO and limits the use of the first and second floor to activities ancillary to the ground floor commercial unit.
8. Article 3(4) of the GPDO 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.
9. Residential use of the first and second floor would be contrary to both of the conditions set out above. Therefore, express planning permission is required for the development and that can only be granted on application made to the local planning authority in the first instance.
10. Therefore, for the reasons above, the proposed development would not comply with the requirements of Article 3(4) of the GDPO.

Nationally described space standard

11. Article 3(9A) of the GPDO provides that Schedule 2 does not permit any new dwellinghouse where it does not comply with the nationally described space standard issued by DCLG on 27 March 2015 (NDSS)

12. The proposed dwelling would be a one bedroom maisonette, over two storeys with a floor area of around 45sqm. The NDSS does not include a 1 bedroom, 1 person, 2 storey dwelling. The minimum size under the NDSS for a two storey dwelling would be a 1 bedroom, 2 person dwelling within a minimum of 58sqm.
13. It requires that for 1 bedroom 1 person dwellings over a single storey and with a shower room a minimum gross internal area of 37sqm is provided. However, the explanatory text states that the different storey heights take account of the extra circulation space needed for stairs to upper floors. Therefore, the 37sqm minimum floor area would not be applicable to a two storey property. Consequently, the standard in the NDSS relevant to the proposed development would be the 1b2p 2 storey dwelling.
14. The proposed dwellinghouse would be a maisonette, however the standard requires that the dwelling provides at least the gross internal floor area and built-in storage area set out in Table 1 and there is no provision for flexibility in this regard. The proposed dwelling would therefore not meet the NDSS.
15. Therefore, for the reasons above, the proposed development would not comply with the requirements of Article 3(9A) of the GDPO.

Whether the building fell within an E class use for 2 years

16. Paragraph MA.1(1)(b) states that development is not permitted by Class MA 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. After 1st September 2020 this relates to Class E uses.
17. The appellant states that the building had been in what is now an E class use since it was built in 2018. However, there is contradictory evidence in the form of an enforcement notice served in 2021 which alleged the use of the first and second floors as a self contained dwelling, an appeal decision (Ref APP/B5480/C/21/3283428) referring to residential use of the first and second floor in 2023 and representations which state a residential use is ongoing. As such, there is no convincing evidence before me that satisfies me that the first and second floors had been in an E class use for a continuous period of at least 2 years prior to the date of the application for prior approval.
18. Therefore, for the reasons set out above, the proposed development would not comply with the requirements of Paragraph MA.1(1)(b)

Other Matters

19. For the reasons set out above the appeal scheme is not permitted development. Therefore, it is unnecessary to proceed to consider the prior approval matters, and there is no discretion for me to consider any suggested benefits of the proposed development.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

H Miles INSPECTOR