



Appeal Decision

Site visit made on 12 November 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2024

Appeal Ref: APP/J3720/W/24/3343918

34 Wood Street, Stratford-Upon-Avon, Warwickshire CV37 6JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA (hereafter referred to as Class MA) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mrs Devinder Singh against the decision of Stratford-on-Avon District Council.
 - The application Ref is 23/02025/COUMA.
 - The development proposed is change of use of Class E Commercial/Business Use into 3no C3 units.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The appeal site's address in the header is from the application form and the Council's decision notice. The appeal form gives the address as 33-35 Wood Street but this has not been confirmed as being correct by the Council.
3. Under the conditions of Class MA, an application must be made as to whether prior approval will be required in relation to matters listed under paragraph MA.2(2). The list of matters includes the impact of noise from commercial premises on the intended occupiers of the development. The Council raises concerns in these respects. The Council's other refusal reason relates to windows to serve the development. Given this concern, I have raised a query with the main parties over the provision of natural light to the proposed residential units, another matter included at paragraph MA.2(2) under Class MA. I have taken the main parties' responses on this matter into account.
4. Therefore, having regard to the Council's refusal reasons and other pertinent matters, I consider the main issues are (i) whether the proposal would constitute permitted development as defined under Class MA, and if so (ii) whether the dwellings would be provided with adequate natural light, and (iii) the effect of noise from commercial premises on the intended occupiers of the development.

Reasons

Whether the proposal would constitute permitted development.

5. Under Class MA, the change of use of a building and any land within its curtilage from a use falling within Class E of Schedule 2 of the Town and

Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C3 (dwellinghouses) is defined as permitted development. The proposed development as stated on the application form clearly falls within this definition.

6. Plans submitted with the application show the reinstatement of rear windows at first floor level as well as the installation of new rooflights in the rear roof slope. However, Class MA only covers the change of use of buildings and associated land. As such, if the development is deemed to include the insertion of the windows and rooflights it would not wholly fall within the definition of permitted development as set out under Class MA.
7. However, the description of development only refers to a change of use. As such, it is fair and appropriate to treat the works to create the windows and rooflights as not forming part of the appeal development. There is no contention that the proposal would fail to accord with any of the clauses set out in paragraph MA.1 under Class MA. On this basis, I conclude the scheme would constitute permitted development.

Natural light.

8. Class W of Part 3 of Schedule 2 of the GPDO (Class W) sets out the procedure for applications for prior approval as required under the conditions of Class MA. Paragraph 2A of Class W states that prior approval must be refused if adequate light is not provided in all habitable rooms of proposed dwellings. Habitable rooms in this context include any rooms to be used for sleeping or living but not solely for cooking purposes. Also, bathrooms are not included¹.
9. The submitted floor plans show a bedroom at first floor level that would only be served by one of the reinstated windows. On my visit, I saw no existing window in such a position. Also, a second floor level bedroom would only be served by one of the proposed rooflights.
10. The appellant and the Council agree that the proposed fenestration is required to ensure the residences are provided with adequate natural light. However, for the reasons as set out under the first main issue, I have assessed this appeal on the basis the development does not include the proposed windows and rooflights. Without these openings, the proposed habitable rooms as referred to above would not have access to sufficient natural light.
11. I have considered whether this matter could be dealt with through the imposition of a condition that would secure the provision of the windows and rooflights prior to occupation of the proposed units. This would only be reasonable if there was no clear obstacle to the windows being provided.
12. The insertion of the new fenestration would affect the external appearance of the current property, even though the proposed first floor windows would be similar to windows that previously existed. Therefore, it seems that such works would represent building operations when having regard to Section 55 of the Act. It follows that the installation of the windows and rooflights would constitute acts of development that require planning permission.
13. The appellant claims the creation of the proposed openings would represent permitted development under Class A of Part 7 of Schedule 2 of the GPDO

¹ Habitable room definition at Class X, Part 3, Schedule 2 of the GPDO.

(Class A). It is not my duty in the determination of this appeal to form a firm conclusion on this matter. However, a condition of Class A is that any alteration shall be at ground floor level only². As such, I am unconvinced the windows and rooflights would be permitted development under Class A.

14. The appellant has referred to a decision made by the Council to grant prior approval in relation to a Class MA development at a property in Oxhill. A condition of that approval requires the development to be carried out in accordance with plans that show the insertion of new windows. However, it is unclear from the submissions whether these windows would have benefitted from planning permission at the time of the prior approval being granted, either through permitted development rights or through an expressed planning permission. I am unable to conclude the appeal scheme is similar to this approved development and so it does not affect my conclusion on this issue.
15. Therefore, it would seem the creation of the proposed windows and rooflights to serve the residences would represent development that requires expressed planning permission. No such permission exists and so the installation of the windows and rooflights would be unlawful. In such circumstances it would be unreasonable to impose a condition that requires the provision of the windows and rooflights. As such, I conclude that 2 of the proposed habitable rooms would not be served by adequate natural light. Having regard to the provisions of Class W, I am bound to refuse prior approval on these grounds.

The effects of noise.

16. The appeal property lies in a town centre location facing onto a road. The ground floor of the building is used as a beauty salon business and next door is a restaurant. To the rear of the property there is a single storey flat roof projection. I saw several items of mechanical plant positioned on top of this projection, which would be directly outside a bedroom and bathroom to the proposed first floor flat. As such, the living conditions in the proposed flats could potentially be affected by noise from the adjoining businesses and associated plant. The appellant's submissions also refer to the effects of traffic noise but only noise from commercial premises is to be considered under the terms of sub-paragraph MA.2(2)(d) under Class MA.
17. Due to the measured levels of external noise, the appellant's initial noise impact assessment recommends mitigation measures in the form of separating wall enhancements and enhanced glazing to serve the development. It is claimed such measures would reduce the effects of noise transfer from the adjoining businesses as well as the impacts of external noise on the internal areas of the proposed units. I find no reason to disagree with the appellant's submissions that such measures would create acceptable internal noise levels within the proposed dwellings.
18. The appellant's submissions acknowledge that with open windows, recommended limits on internal noise levels may be exceeded in some of the rooms. To address this issue a mechanical ventilation system is proposed that would allow future residents the option of ventilating the residences without opening windows. The Council is concerned that reliance on such a system may compromise the quality of life for occupants as it forces a choice between fresh air and acceptable noise environment. However, the list of matters to be

² Paragraph A.2(a) under Class A.

considered as set out in paragraph MA.2(2) of Class MA does not include ventilation or general quality of life issues. As such, the Council's objections on these grounds do not affect my views on this matter.

19. The appellant's assessment of noise is based on the restaurant's current operating hours and the Council is concerned that these may change. However, even if this were to occur, I am satisfied from the evidence that the proposed noise mitigation measures and mechanical ventilation system would enable acceptable internal noise levels to the flats.
20. For these reasons, I conclude there would be an acceptable effect of noise from nearby commercial premises on the occupiers of the proposed development.

Conclusion

21. The proposal would represent permitted development as defined under Class MA and I have found that noise from nearby commercial premises would have acceptable effects on living conditions for future residents. However, on the basis that proposed windows and rooflights do not form part of the development, 2 of the proposed habitable rooms would not be served by adequate natural light. Therefore, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR