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# Appeal Decision

Site visit made on 28 November 2024

**by A Wright BSc (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 December 2024**

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**Appeal Ref: APP/A2280/W/24/3342620**

**Commercial unit to the rear of 4 Batchelor Street, Chatham, Medway ME4 4BJ**

- 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 Mr Abdul Mumtaz against the decision of Medway Council.
  - The application Ref is MC/23/0572.
  - The development proposed is the change of use of an existing commercial building into 6no. dwellinghouses.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The address is indicated on the application form as "4 Batchelor Street, Chatham, Medway ME4 4BJ". The decision notice and the appeal form cite the address as "Commercial unit to the rear of 4 Batchelor Street, Chatham, Medway ME4 4BJ" which I have used in the banner above as this is a more accurate description of the address.
3. Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permit the change of use of a building within Class E (commercial, business and service) of the Use Classes Order (UCO) to a use within Class C3 (dwellinghouses) of the UCO.
4. Article 3(9A)(b) of the GPDO sets out that Schedule 2 does not grant planning permission for, or authorise any development of, any new dwellinghouse that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.
5. 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.
6. The Council refused to grant approval on the basis that the scheme does not meet the provision in Article 3(9A)(b) and the condition in paragraph MA.2(2)(f) relating to adequate natural light provision in habitable rooms.
7. The third reason for refusal relates to the proposal failing to address the impact on Special Protection Areas (SPAs). The appellant submitted a signed

and dated unilateral undertaking which includes a SPA mitigation contribution, and the Council considers that this issue has been addressed. I return to this issue later.

8. Therefore, the main issues in this appeal are:

- whether the proposed development would be granted planning permission under Article 3(9A)(b) of the GPDO where it requires new dwellinghouses to comply with the nationally described space standard (NDSS); and if so
- whether prior approval should be granted having particular regard to the provision of adequate natural light in all habitable rooms of the dwellinghouses.

## **Reasons**

9. The NDSS sets out minimum gross internal floor areas (GIFA) for dwellings according to the number of bed spaces and storeys. It requires a 37m<sup>2</sup> minimum GIFA for one storey dwellings providing one bedroom and one bed space where the unit has a shower room. The NDSS requires larger GIFAs for units accommodating more persons and storeys, with the latter taking account of the extra circulation space needed for stairs to upper floors. To provide one bed space, the NDSS requires a bedroom at least 2.15m wide with a minimum floor area of 7.5m<sup>2</sup>. It does not include provision for studio flats or for one person, two storey units.
10. The proposal would create six flats over two levels, including on mezzanines accessed via staircases. The GIFA for each flat would be 39m<sup>2</sup>, including the stairs. The mezzanines would meet the minimum width required for a single bed space, but these are not shown as bedrooms, nor have their floor areas been provided as it is indicated that the spaces are designed to be used flexibly with no potential for subdivision.
11. I note other decisions by an Inspector on appeal and by Councils where mezzanines were included in their assessments of space standards for proposed one bed one person dwellings, including on the appeal site<sup>1</sup>. However, regardless of which overall GIFA would apply, there is insufficient information to demonstrate that bedrooms with floor areas of at least 7.5m<sup>2</sup> would be provided as required for dwellings accommodating one bed space.
12. Consequently, I conclude that the proposed development would not be granted planning permission under Article 3(9A)(b) of the GPDO where it requires new dwellinghouses to comply with the NDSS.
13. As I am dismissing the appeal for not being permitted development, there is no need to consider whether the proposal would provide adequate natural light in all habitable rooms of the dwellinghouses.

## **Other Matters**

14. The appeal site is within 6km of the Thames Estuary and Marshes and Medway Estuary and Marshes SPAs and Ramsar sites and without mitigation is likely to have a significant effect on these sites. Article 3(1) of the GPDO grants planning permission for Schedule 2 permitted development subject to

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<sup>1</sup> Appeal Ref APP/N5090/W/19/3220030, Medway Council Planning Application Ref MC/23/0686, Folkestone and Hythe District Council Planning Application Ref 21/1306/FH

Regulations 75-78 of the Habitats Regulations<sup>2</sup>. 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.

15. Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect European habitats sites such as the Thames Estuary and Marshes and Medway Estuary and Marshes SPAs. Accordingly, notwithstanding the SPA mitigation contribution contained in the unilateral undertaking, 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 sites.
16. Reference has been made to several other matters, including the location and accessibility of the site, car free development and the proposal's compliance with other conditions in paragraph MA.2(2) of the GPDO. However, the GPDO grants planning permission within specified parameters, and none of these points affect whether the proposal is permitted development.

### **Conclusion**

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

*A Wright*

INSPECTOR

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<sup>2</sup> The Conservation of Habitats and Species Regulations 2017