



Appeal Decision

Site visit made on 10 December 2024

by **K Townend BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/E3335/W/24/3346575

75 High Street, Burnham-on-Sea, Somerset TA8 1PE

- 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 G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Mark Warren on behalf of Jenner Design and Planning against the decision of Somerset Council.
- The application Ref is 11/24/00024.
- The development proposed is to convert a vacant first floor dining area and storage to two self-contained two bedroom flats. To convert part of the restaurant facing Victoria Street to self-contained office.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Practice Guidance states that *permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity.* This is effectively a 2-stage process where it is necessary in the first instance to determine whether or not the proposal is permitted development.
3. Class G of Part 3 of Schedule 2 to the General Permitted Development Order (the Order) permits the change of use of a building from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to two flats. The Council's first reason for refusal is concerned that the proposal results in the creation of three flats and, therefore, would not comply with Class G of the Order.
4. Paragraph G.1.(d) of the Order sets out that development under Class G is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to, amongst other matters, (ii) flooding risks in relation to the building; (iv) the provision of adequate natural light in all habitable rooms of the dwellinghouses; and (v) arrangements required for the storage and management of domestic waste. The Council's second reason for refusal relates to these issues.

Main Issue

5. Given the above, I consider the main issue is whether the proposal would be permitted development under Class G of the Order; and, if so, whether prior

approval would be required as to the flood risk, natural light, and waste storage arrangements.

Reasons

6. The appellant claims that the appeal proposal is for two apartments and the submitted plans indicate two apartments are proposed within the first floor restaurant space.
7. However, the appellant also notes that there is an existing flat in the building. Although they also claim that it is in a different building the submitted floor plans indicate an existing flat at first floor above the restaurant. The planning history for the appeal site, as detailed in the Council Officer report, indicates planning permission for change of use and conversion from Class E use to restaurant and takeaway, with the partial conversion of first floor to form managers flat. Even if the existing flat is ancillary to the restaurant use on the ground floor there is an existing flat within the building.
8. That flat is accessed from a separate door and staircase. Nevertheless, it is within the same building as the appeal before me, as indicated by the red edge of the site plan, drawing S01 03/24 Rev A. Moreover, the bathroom and an entrance door to the proposed Flat 2 would be within the same part of the building as the existing flat. Consequently, I find that the existing building already contains a single flat.
9. Part G, of the Order, only permits the change of use of a building, under the prior approval process, from a use within Class E to a mixed use for any purpose within that Class and as up to two flats. The existing flat within the building would result in the building containing three flats. Consequently, the appeal proposal would not fall within the scope of Class Ga of the Order and would not, therefore, constitute permitted development.

Other Matters

10. Given my conclusion that the proposed development would not be development permitted under Class G of the Order, there is no need for me to consider whether or not prior approval would be required, as it would not alter the outcome of the appeal.
11. I have had regard to the appellant's comments in respect of the provision of tourist accommodation, employment in the local area and the lack of communication with the Council. However, I have determined the appeal within the context of the Order.

Conclusion

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

K Townsend

INSPECTOR