



Appeal Decision

Site visit made on 17 December 2024

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 January 2025

Appeal Ref: APP/W2465/W/24/3347322

94 Halstead Street, Leicester LE5 3RD

- 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 Haroon Adam against the decision of Leicester City Council.
 - The application Ref is 20240365.
 - The development proposed is change of use of ground floor and first floor from (Class E) to 7 x 1-bed and 1 x 2-bed flats (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Background and Main Issues

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 provides for a permitted development right to change the use of a building within Class E (commercial, business and service) of the Use Classes Order¹ as amended (UCO) to a use within Class C3 (dwellinghouses) of the UCO.
4. Paragraph MA.1. (1) and (2) set out the requirements to qualify for permitted development under Class MA. Paragraph MA.1. (1) requires the use of the building to fall within paragraph MA.1. (2) for a continuous period of at least two years before the date of the application for prior approval. There is no dispute between the main parties that the proposed development would qualify for permitted development under Paragraph MA.1. (1) and (2).
5. Paragraph MA.2. (2) requires that where any development under Class MA is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for its prior approval subject to a number of matters relating to the development. This

¹ Town and Country Planning (Use Classes) Order 1987.

includes, amongst other matters, (b) contamination risks in relation to the building; and (f) the provision of adequate natural light in all habitable rooms.

6. Article 3(9A) (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) 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 (NDSS).
7. The Council refused to grant approval on the basis that the proposal does not meet the provision in Article 3(9A) (b) with particular regard to the provision of built-in storage and the condition in paragraph MA.2. (2) (b) and (f) relating to contamination risks of the building and the provision of adequate natural light in all habitable rooms.
8. Therefore, the main issues are:
 - whether the proposed development would comply with the nationally described space standard (NDSS); and if so
 - whether prior approval should be granted having particular regard to the contamination risks in relation to the building and the provision of natural light in habitable rooms.

Reasons

Nationally described space standard (NDSS)

9. The NDSS provide minimum gross internal floor areas (GIA) and storage (sqm) for dwellings according to the number of bed spaces, persons and storeys. The proposed development would provide a total of eight units and comprise of four flats at ground floor level [one 2-bed, 3 person (Flat 2) and three 1-bed, 1 person (Flat 1, 3 and 4] and four flats at first floor level (two 1-bed, 1 person (Flat 5 and 6) and two 1-bed, 2 person (Flats 7 and 8)).
10. The appellant contends that all of the flats comply with the NDSS and has provided plans indicating the total floor areas and room dimensions of each flat. In this case, the Council has applied the space standards incorrectly insofar as the evidence suggests that it does not consider built-in wardrobes to count towards the built-in storage requirements. However, the NDSS states that built-in wardrobes count towards the GIA and bedroom floor area requirements and that built-in storage areas are included within the overall GIAs. Therefore, it must be concluded that the proposed development would comply with the NDSS and the proposed development would fall within the provisions of Schedule 2, Part 3, Class MA of the GPDO subject to approval of the relevant prior approval matters.

Prior approval matters

Contamination risks of the building

11. The procedure for applications for prior approval set out in Class W of the GDPO. Paragraph (10) (c) sets out the requirement to determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act

1990 (Part 2A), with regard to the Contaminated Land Statutory Guidance issued in accordance with Section 78 of that Act², and to refuse prior approval if the site will be contaminated land.

12. The Council suggests that the site has been in industrial use for many years and there is no information about whether there could have been chemicals or materials used in works over the years that could have resulted in contamination. Whilst it is acknowledged that the building was used most recently by factory workers in the clothing industry, contamination may have occurred more historically, and the appellant has not submitted a contaminated land assessment with the appeal to confirm there would be no contamination risks associated with the residential use of the building.
13. Whilst there is scope within the GPDO to attach planning conditions reasonably related to contamination, there is no substantive evidence of the extent of any contamination, what mitigation would be required, or if it is achievable in this location. Based on the information before me, a conditional approach would not be appropriate taking into account risks to human health. As such, there is insufficient evidence to convince me that the site will not qualify as contaminated land either with or without remediation under Part 2A in relation to the intended use of the building.
14. For the above reason, I conclude that it has not been demonstrated that the site would not be contaminated as a result of the proposed change of use and the proposed development would not therefore meet the requirements of MA.2. (2) (b) under Class MA of the GPDO.

Provision of natural light in habitable rooms

15. Paragraph (2A) of Class W of the GDPO sets out that prior approval must be refused if adequate light is not provided in all habitable rooms of proposed dwellings. The provision of adequate natural light is not defined in the GPDO although habitable rooms in this context include any rooms intended to be used for sleeping or living but not solely for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms³.
16. The appellants Daylight Report (2024) (DR) concludes that all of the rooms assessed achieved the recommended internal daylight requirements set out in the British Standard "Daylight in Buildings" 2018 and addendum to the standard published in 2021 (BSDB). Specifically, All the habitable rooms assessed achieved the recommended value of 50% of the floor areas achieving the target light level.
17. Based on the information before me, the BSDB is a suitable basis on which to consider whether the proposal would provide adequate natural light for future occupiers. The windows serving the studio room in Flat 1 and the bedrooms in Flat 2 face onto a shared access and face towards walls and adjacent buildings which appear to be accurately depicted on the model contained in the DR. Having visited the site and considered the position, orientation, size and quantum of the windows serving each room, in addition to the proposed room depth, there is no substantive evidence to dispute the findings contained within the DR.

² Environmental Protection Act 1990: Part 2A (Contaminated Land Statutory Guidance), DEFRA (April 2012)

³ Habitable room definition at Schedule 2, Part 3, Class X of the GDPO

18. However, the evidence indicates that the shared access located adjacent to the appeal site is within third-party ownership and is not within the control of the appellant. This land appears to be in commercial use and I saw items including wooden pallets and storage containers on part of the access during my site visit. Whilst these items may have been positioned there temporarily and were lower than window height at the time of my visit, there is no evidence to confirm that further items above window height could not be placed on this land in the future. If this were to occur, this would block daylight to these rooms and whether there are any mechanisms to prevent this from happening have not been presented in the appellant's evidence.
19. For the above reason, I conclude that it has not been demonstrated that the proposed development would provide adequate natural light in all habitable rooms of the proposed flats and the proposed development would not therefore meet the requirements of MA.2. (2) (f) under Class MA of the GPDO.

Other Matters

20. Whether or not the Council requested a contaminated land assessment in relation to two previously refused planning applications for the conversion of the appeal site to flats (Council refs: 20202355 and 20220259) or whether or not it can demonstrate a five-year housing land supply are not matters which are material to the determination of this appeal which must be assessed against the legislation set out in Class MA of the GDPO.

Conclusion

21. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR