



Appeal Decision

Site visit made on 13 January 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 February 2025

Appeal Ref: APP/W3005/W/24/3351650

99 Vernon Road, Kirkby in Ashfield NG17 8ED

- 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 Fewster and Oldhall of OFC Ltd against the decision of Ashfield District Council.
 - The application Ref is X/2024/0008.
 - The development proposed is described as prior notification for the conversion of a workshop to form two residential apartments under Class MA – Use Class E to residential.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has made reference to the potential for the conversion to take place without some of the operational development proposed, including the raising of the ridge of the roof, to address concerns raised by the Council in its decision. However, no alternative drawings are before me and I am obliged to determine the appeal proposal based on the plans considered by the Council when it made its decision.
3. 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

4. Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (Class MA) 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.
5. 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.

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

6. Paragraph MA.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 includes the transport impacts, contamination risks, flooding risks, impacts of noise and the provision of adequate natural light in habitable rooms.
7. Whilst there is no dispute between the main parties that the proposed development would qualify for permitted development under Paragraph MA.1. (1) and (2), the Council refused to grant approval on the basis that the proposal includes operational development which does not meet the requirements for permitted development under Class MA. The Council also refused to grant approval on the basis that the proposal does not meet the conditions in paragraph MA.2. (2) (a) and (f). These conditions relating to the transport impacts of the development, particularly to ensure safe site access and the provision of adequate natural light in all habitable rooms.
8. Therefore, the main issues are:
 - whether the proposed development would constitute permitted development as defined under Class MA; and if so,
 - the effect of the proposed development with regard to the prior approval matters specified in paragraph MA.2. (2) under Class MA with particular regard to the transport and the provision of natural light.

Reasons

9. The appeal site relates to 99 Vernon Road (No 99) is accessed via a narrow driveway that leads to land containing a two-storey building previously used as a workshop. It is located to the rear of houses that front onto Vernon Road and Hampden Street.
10. The proposed plans indicate the raising of the ridge of the roof of the building, the insertion of a door and the blocking up and insertion of new windows including a juliet balcony and roof lights. These works would represent building operations and would constitute development having regard to the provisions of Section 55 of the Town and Country Planning Act 1990. As such, the proposed development includes building operations required to facilitate the proposed change of use.
11. Class MA permits a change of use of a building but not operations required to facilitate the change of use. Consequently, the extent of the development proposed goes beyond that allowed under Class MA.
12. The appellant indicates that the required proposed physical alterations to the exterior of the building would be subject to a separate planning application. However, planning permission would be a separate matter and has not yet been secured. Therefore, there is no mechanism before me to ensure the implementation of the operations required to facilitate the change of use. On this basis, I conclude that the proposed development would not constitute permitted development as defined under Class MA.
13. Considerations in relation to the effect of the proposed development with regard to the prior approval matters specified in paragraph MA.2. (2) under Class MA under the second main issue only apply if the proposal is permitted development. As the

proposal would fail to constitute permitted development under Class MA, it is not necessary or appropriate to proceed to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

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

H Marriott

INSPECTOR