



Appeal Decision

Site visit made on 24 February 2025

by **L Clark BA(HONS) DIPTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 March 2025

Appeal Ref: APP/X1355/W/24/3356816

Bridge House, North Road, Durham DH1 4PW

- 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 Ridley Properties against the decision of Durham County Council.
 - The application Ref is DM/24/01241/PN56.
 - The development proposed is prior approval for change of use from Class E to 5 residential dwellings (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) was revised in December 2024, with further minor updates in February 2025. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments.

Background and Main Issue

3. 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 GPDO), planning permission is granted for the change of use from commercial, business and service (Use Class E) to dwellinghouses (Use Class C3) subject to certain limitations and conditions.
4. Paragraph MA.2 sets out that development under Class MA is permitted, subject to an application to the local planning authority, for a determination as to whether prior approval is required in relation to the matters set out in paragraphs MA.2(2). This includes, amongst other matters, (h) where the development involves the loss of services provided by – (i) a registered nursery, or (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006 (the Act), the impact on the local provision of the type of service lost.
5. The current use of the appeal site is a dentist, this falls under section 3 of the Act. The purpose of the GPDO and the Act is to ensure healthcare services meet reasonable requirements for the people for whom it is responsible, and thus maintain adequate NHS services. Accordingly, the main issue is whether the proposal would result in the loss of services provided by a dentist, and if so, the impact of the proposal on a dental service.

Reasons

6. The appeal property relates to the first floor of a four-storey building, which has commercial use to the ground floor and what appears to be residential above. There is no dispute that the appellant served a Section 25 eviction notice on its tenant, 'MyDentist' and that this was deemed to have taken effect by January 2025. However, it was clear at the time of my site visit that 'MyDentist' was still operating from the appeal property. As such, a health centre service under the Act was in operation.
7. I note that both the appellant and 'MyDentist' have confirmed that alternative premises are being sought, however, in their letter dated 14 January 2025, 'MyDentist' states that they have not yet secured planning permission¹ for alternative premises or secured NHS approval to move their contract. As such, given my observations, I am required to assess its loss.
8. There is no dispute that the number of dental practices taking on new NHS patients can fluctuate. The appellant contends that there are twelve other dental surgeries within a 3-mile radius of Durham City Centre. However, the Council state that at the time of its assessment, there were approximately eleven dentists within a 3-mile radius of the appeal site postcode; of these two confirmed acceptance of NHS patients, one of which is only accepting NHS patients for specialist dental care by referral, and the other is only accepting NHS patients aged 17 or under; five confirmed they are not accepting any NHS patients at all and the four remaining failed to provide a recent update.
9. Whilst the specific number of practices differs slightly, in the absence of any evidence to the contrary, they demonstrate that dental services within Durham, which have capacity, are in short supply and are prescriptive. In contrast, 'MyDentist' has confirmed that when availability allows, it would accept new NHS patients including children aged 17 or under and adults aged 18 entitled to free dental care.
10. The appellant contends that the Council accepted the loss of the dental service within its planning application Ref DM/23/03400/FPA. Neither party have provided me with the circumstances relating to this case, however, the Council has clarified that this application related to a full planning application which was refused. Even if the outcome of the planning application would have resulted in the loss of the dental service, the procedure with which the appellant sought the change of use was different, a matter which is not disputed by the appellant. Furthermore, the Council contend that the planning application was assessed against its Development Plan policies, specifically Policy 6 of the County Durham Plan 2020 and Policy C3 of the Durham City Neighbourhood Plan (DCNP). I do not have a copy of either policy, however, even if Policy C3 of the DCNP does refer to community facilities, the GPDO is clear and refers to the loss of an NHS service on local provision. Moreover, regard does not have to be had to the development plan in the assessment of a prior approval, as normally would be the case. I have therefore determined the appeal on its own merits based on the evidence before me.
11. The appellant contends that as the dental practice is a Class E use it could be changed to another use within Class E without the need for planning permission

¹ Ref DM/24/03215/FPA

(the Class E fallback position). In the event of the appeal being unsuccessful, I consider that there is a greater than theoretical possibility that the fallback position might take place. It is therefore a material consideration in my assessment. However, given that the dentist was operating at the time of my site visit, any fallback position has limited weight. Furthermore, whether or not the current tenant chooses to leave is not determinative in my assessment given that the dental service was in operation at the time of my site visit.

12. 'MyDentist' contend that not being able to relocate would be a catastrophic loss, not only to their business, but to the local community in Durham who heavily rely on the service. The statistics within the Healthwatch England Report, which outlines that dental patients frequently raise issues with regard to access and that 83% of dentists across County Durham were not accepting new NHS patients. In the absence of any evidence to the contrary, I have no reason to take a different view. The loss of an existing dental service within the city would therefore likely result in a lack of routine dental appointments and increased waiting times, which could lead to delays in essential dental care. It may also lead to increased travel distances for patients, which could be challenging especially for those less mobile.
13. I therefore find that the appellant has not provided me with sufficient evidence to demonstrate that the loss of the dental service would not result in a gap of that service, which would ensure all reasonable requirements are met.
14. For the reasons given above, I find that the proposed development would result in the loss of a dental service. This would have a harmful impact on the provision of the health centre maintained under Section 2 of the Act and conflict with the requirements of paragraph MA2 (2)(h)(ii) of the GPDO.

Other Matters

15. The absence of harm with regard to transport impacts, contamination risks, flooding, noise impacts and natural light provision are neutral matters in my determination of this appeal.

Conclusion

16. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

L Clark

INSPECTOR