



Appeal Decision

Site visit made on 13 January 2025

by **H Senior BA (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th March 2025

Appeal Ref: APP/Z4310/W/24/3349675

6a Buckingham Road, Tuebrook, Liverpool L13 8AZ

- 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 Jonathan Veach against the decision of Liverpool City Council.
 - The application Ref is 23PO/3164.
 - The development proposed is to change use of existing light industrial site (Use Class E) to 2 dwellings (Use Class C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr Jonathan Veach against Liverpool City Council. This application is the subject of a separate decision.

Preliminary Matters

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) (the GPDO) provides for a permitted development right for the change of use of a building falling within use class E (Commercial, Business and Service) to class C3 (dwellinghouses). Paragraph MA.1. (1) and (2) set out the requirements to qualify for permitted development under Class MA.
4. If the appellant wishes to ascertain the lawful use of the appeal building, then he should apply for a lawful development certificate under s191 (for an existing use) or s192 (for a proposed use) of the 1990 Act (as amended).

Main Issue

5. The main issue is whether the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

6. Under paragraph MA.1(1)(b) development is not permitted unless the use of the building falls within one or more of the classes specified for a continuous period of at least 2 years prior to the date of the application for prior approval. Put simply, this only requires the timeframe of the use under Class E to have taken place for at least two years before the appeal application was made.

7. The building is currently disused, but the evidence before me refers to its form and appearance, relationship to neighbouring residential uses, and features remaining inside when its ownership changed to the appellant. A statement is also submitted from the previous owner's brother, attesting to building housing offices for three businesses, including a scaffolding company, small plumbing business and the previous owner's business. However, this is unsigned and not dated. A representative of the next to last owner (a heating supplier) has also confirmed that some manufacturing took place of copper cylinders, with some office space and a trade counter. There are few details, and the email provided appears to suggest that these are only recollections. Together these could not therefore realistically be relied upon as statements of fact. Nevertheless, there is limited substantive evidence before me that these uses fell within Class B1 or Class E.(g).
8. The Officer Report (OR) for the previous application for planning permission to change the use of the appeal building to dwellings¹ described it as being "light industrial". The appellant states that the appeal application was submitted based on this identification. While I have been referred to the concepts of Estoppel and legitimate expectation, these are not relevant in this case because the OR does not amount to a determination of lawfulness, just as this decision would also not do so. Accordingly, the previous OR did not stop the Council from being able to refuse the appeal application.
9. From the evidence before me on the previous uses of the buildings, for the purposes of this appeal only and without prejudice to any future proceedings, I cannot be certain that two years of continuous Class B1 or Class E use has been demonstrated, as required by Class MA.1 of the GPDO.
10. I therefore conclude that the proposal when considered as a whole would not constitute permitted development as defined by Class MA of the GPDO. Accordingly, there is no need for me to go on and consider whether or not prior approval should be required and granted having regard to the impacts of the development set out in Class MA.2(2), as it would not alter the outcome of the appeal.

Conclusion

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

H Senior

INSPECTOR

¹ Planning Reference: 23F/1825.