



Appeal Decision

Site visit made on 24 February 2025

by **C Skelly BA (Hons) MSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/H5390/W/24/3356035

Marlin and Solon House, 40 Peterborough Road, London SW6 3BN

- 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) (GPDO).
 - The appeal is made by Mr Hawkins of Vibegold Limited against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref is 2024/01436/PMA56.
 - The development proposed is change of use from offices (Class E) to two 3 bedroom, one 2 bedroom and one 1 bedroom self-contained flats (Class C3).
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, planning permission is granted for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 of that Order, subject to limitations and conditions.
3. Article 3(4) of the GPDO states that, “nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order”. The Council considers that due to a condition imposed on the original planning permission, the proposed development would be contrary to Article 3(4) of the GPDO as set out above and prior approval was refused. The Council also refused the proposal due to transport impacts and provision of adequate natural light. Accordingly, the main issues are whether or not the proposal is permitted development by Schedule 2, Part 3, Class MA of the GPDO; and if so, whether the conditions and limitations of Class MA.2. (2) would be met.

Reasons

4. The appeal site relates to a three-storey office building located on the western side of Peterborough Road. This was erected further to planning permission Ref. 2003/02174/FUL, for the erection of a three-storey, plus part basement building (1,040sqm) to be used as offices (Class B1) on the Peterborough Road frontage, and a pair of 2-storey plus basement semi-detached properties on the rear of the site, comprising 2 live work units; together with related car parking and servicing.

5. Condition 4 attached to the planning permission states that “the building on the frontage shall only be used for purposes within Class B1 of the Use Classes Order”. The appellant contends that as Class B1 has ceased to exist due to the changes to the Use Classes Order, condition 4 of the permission has no continuing effect. The condition also makes no reference to “express consent” nor does it explicitly mention the GPDO.
6. Both parties have referenced an appeal at Sandford House, Solihull which relates to a prior approval for a similar case where a condition of a previous planning permission does not explicitly reference the GPDO. The Solihull appeal is different to the current appeal as it included the words “and for no other purpose”. However, condition 4 includes the wording “shall only be used for” instead. Case law¹ has established that the words used in conditions should be given their plain and ordinary meaning.
7. The Inspector for the Solihull case also highlighted that the reason provided for the condition is an important factor, which provides clarity on the intention of the condition. The reason for condition 4 clearly sets out that its intention is to safeguard the employment opportunities of the site.
8. Overall, the only reasonable reading of the condition is that the change of use of the building to residential should not be carried out without the specific permission of the local planning authority, irrespective of any changes to the Use Classes Order since it was imposed. Although the Unitary Development Plan has been superseded since the date of permission, this is not relevant as a prior approval does not expressly or otherwise require determination of the appeal on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004.
9. The condition was imposed prior to the current form of the GPDO, which includes the ability to apply for prior approval for developments as proposed. The Council, therefore, could not have accounted for the current prior approval process in its wording of the condition. Moreover, the words in the condition, such as “only for the purposes”, and its reason, clearly demonstrate an intention to remove any permitted development rights that may be exercised through the GPDO.
10. Consequently, I find that due to the condition imposed on the original planning permission that Article 3(4) prevents the change of use from Class E to Class C3 under Schedule 2, Part 3, Class MA of the GPDO from being permitted development. As consideration in relation to prior approval under paragraph MA.2. (2) is dependent on the outcome of the first main issue, I have not needed to consider the detailed prior approval matters in relation to transport impacts and provision of adequate natural light.

Conclusion

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

C Skelly

INSPECTOR

¹ Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] EWHC 534 (Admin), [2017] EWCA Civ 192