



Appeal Decision

Site visits made on 18 March and 8 April 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2025

Appeal Ref: APP/D1590/W/24/3357343

9 Elmer Approach, Southend-on-Sea SS1 1NE

- 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 Elmer Developments Ltd against the decision of Southend-on-Sea City Council.
 - The application Ref is 24/01424/PA64.
 - The development proposed is described as 'Change of use from Commercial to Residential via Permitted Development'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form did not provide a description of the proposed development, but it referred to details in a covering letter. The description I have included in the banner heading above is as stated in the heading of the covering letter dated 13 September 2024. The Council described the proposed development more fully as 'change of use of second to ninth floors from commercial (Class E) to 102 No. self-contained flats (Class C3), with associated cycle and bin store on ground floor (prior approval). That corresponds with details in the application documents, and I have considered the appeal on that basis.
3. I have considered the appeal in parallel with a separate appeal ref APP/D1590/W/24/3351390, which relates to refusal of an application to vary a condition imposed on prior approval decision reference 18/01873/PA3COU, pursuant to paragraph O.2(2) of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). I undertook an initial site visit for both appeals on 18 March 2025, however arrangements which had been made for internal access to the building on that day fell through at short notice. I therefore returned on 8 April 2025, to complete the site inspection.
4. A Unilateral Undertaking (UU) was provided with the appeal, in relation to the second reason for refusal. I return to that matter below.

Background and Main Issues

5. Schedule 2, Part 3, Class MA of the GPDO permits development consisting of a 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 Order¹ to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order. Paragraph MA.2(2) requires that before beginning development under Class MA the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to a range of issues numbered (a) to (i). The application was made on that basis.

6. The Council contends that the application did not comply with relevant requirements in Schedule 2, Part 3, paragraph W of the GPDO, which is applicable where an application is required for determination as to whether the prior approval of the authority will be required. Paragraph W(11) states in summary that the development must not begin before receipt of written notification from the local planning authority that prior approval is not required, or is granted, or the expiry of 56 days following receipt of the application without a decision being issued. In this case, a decision was issued refusing prior approval, on grounds including that the development had begun before the application was made and that the proposal would therefore not be permitted development as defined in the GPDO.
7. Against that background, I consider the main issue to be whether the proposal would be permitted development under Class MA of Schedule 2, Part 3 of the GPDO, with particular reference to whether the proposed development had begun in advance of prior approval being sought.

Reasons

8. The appeal site contains a ten-storey building in the city centre, near the High Street. There are retail units on the ground and first floor, which would be retained. The second to ninth floors were formerly used as offices which the parties agree was a Class E use as defined in the Use Classes Order. However, prior approval was granted in December 2018² for conversion of the third to ninth floors to 119 flats and in May 2019³ for an additional 17 flats on the second floor. In both cases, prior approval was granted pursuant to the permitted development rights in effect at that time for change of use from Class B1(a) (Offices) to Class C3 (dwellinghouses), as defined in Schedule 2, Part 3, Class O of the GPDO (the Class O scheme).
9. The building is currently vacant and enclosed by scaffolding, with part-completed construction works on all floors. While the internal works are incomplete, they include partitioning of the previously open plan floor plates, creating several separate units to either side of a central access corridor. There are door openings along the corridors, consistent with the formation of 17 self-contained units per floor, which corresponds with the approved Class O scheme. Indeed, the appellant acknowledges that the approved Class O scheme has been commenced.
10. Both Class O and Class MA relate only to change of use of a building and any land within its curtilage. The wording is almost identical, save for the updated reference in Class MA to the relevant Use Class for commercial, business and service uses. Neither Class permits operational development, such as external alterations, which are subject to separate approval if required. As such, in order to establish whether the development permitted by Class MA has begun, it must be considered whether the works undertaken to date amount to a change from office to residential use,

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

² Prior approval application reference 18/01873/PA3COU

³ Prior approval application reference 19/00666/PA3COU

while bearing in mind that physical works of conversion can be relevant when considering whether a change of use has taken place.

11. The part completed works include replacement of the original continuous office windows with smaller window openings separated by blockwork panels. The evidence does not clarify whether planning permission was required, or has been obtained, for the window alterations. Nevertheless, nothing in the evidence or planning history indicates that the replacement windows were installed for any purpose other than to facilitate the change of use to flats. They vary in size and their number, scale and form is consistent with a residential use, which necessitates formation of several rooms for different purposes, each requiring a greater or lesser amount of natural light and ventilation. Therefore, while the windows are operational development, outside the scope of Class MA, they are an indicator that the process of changing the use of the building to residential has commenced.
12. The internal layout currently differs in a number of respects from the Class MA scheme, which would provide a smaller number of flats on each floor. Many of the internal walls are in different places. However, the plans confirm that the central spine corridor would have the same layout in both schemes. This is a key feature which facilitates subdivision of the building into several self-contained units accessed from a communal hallway, as opposed to open plan office space on each floor. The internal works I observed on site included insertion of new-looking suspended ceilings at a typically domestic height, and on the top floors there were some light units, electric sockets and a few domestic fittings such as internal doors and shower trays. While these were laid out in accordance with the Class O scheme, and works on the lower floors were less advanced, the alterations I observed were clearly related to the intended residential use of the building.
13. On the basis that the works to date relate to implementation of the Class O scheme, the appellant argues that the Class MA scheme has not commenced. However, although the residential units are incomplete and not yet capable of occupation, they have reached a point where the building has assumed many of the characteristics of a block of flats. On the basis of my site inspections, there appears little prospect that the building could revert to office use without significant further investment and alterations. Based on the evidence before me, I consider that development comprising a material change of use from Class E to Class C3 has occurred.
14. There is no suggestion that the works which have been undertaken to date would be ripped out and re-started in order to implement the Class MA scheme, if prior approval was granted. No further alterations to the windows are proposed and the internal works to provide a central access corridor and domestic utilities would be common to both schemes. While I acknowledge that further physical alterations would be required to the internal layout of each flat, and to some of the walls which define the number of flats per floor, the question before me is whether the proposed development has commenced, not whether it has been completed. In my judgement, on the circumstances of this particular case, implementation of the physical changes which are common to both schemes does amount to commencement of the Class MA scheme. Furthermore, the alterations to the building have progressed to a point where the change of use permitted by Class MA has occurred.

15. I therefore conclude that, as a result of the works undertaken to date, the proposed development comprising a material change of use of the building from Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses) has commenced without complying with the conditions set out in paragraphs MA.2(2) and W(11) of the GPDO. Consequently, the proposal would not be permitted development under Class MA of Schedule 2, Part 3 of the GPDO, because the development had begun in advance of prior approval being sought.

Other Matters

16. The second reason for refusal related to the absence of any mitigation of likely significant effects of the proposed development on Essex Coast Habitats Sites, in combination with other development. A UU has been provided by the appellant, with a view to addressing that matter, although the Council has highlighted issues relating to its drafting and completion. Nevertheless, having concluded that the development before me is not permitted development, it is neither necessary nor appropriate for me to give any further consideration to the effect of the proposed development on the integrity of Habitats Sites. Nor is it necessary for me to consider how that would appropriately be addressed, in accordance with the terms of the GPDO and the relevant procedure set out in Conservation of Habitats and Species Regulations 2017.

Conclusion

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

Jane Smith

INSPECTOR