



Appeal Decision

Site visit made on 29 April 2025

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 09 May 2025

Appeal Ref: APP/D1590/W/24/3357514

67 West Road, Shoeburyness, Southend-on-Sea SS3 9DT

- 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 Daniel Mead against the decision of Southend-on-Sea Borough Council.
- The application Ref is 24/01351/PA64.
- The development proposed is change of use from shop/office (Use Class E) to dwellinghouse (Use Class C3).

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Daniel Mead against Southend-on-Sea Borough Council. This is subject to a separate decision.

Background and Main Issues

3. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits development comprising 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) to a use falling within Class C3 (dwellinghouses). 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 regarding a range of issues.
4. Paragraph W(11) of the GPDO states 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 the grounds that the development had begun before the application was made and that the proposal would therefore not be permitted development. A second reason for refusal was also included in the Council's decision notice relating to the effects of the proposal on the integrity of European sites, a matter which I will return to later in this decision.
5. The main issue in this case is therefore whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO, with particular reference to whether the proposed development had begun in advance of prior approval being sought.

Reasons

6. Class MA relates only to the change of use of a building and any land within its curtilage. It does not permit any operational development, which would be subject to separate approval if required. In order to establish whether a change of use from Class E to residential use has already commenced, the works undertaken so far must be considered, bearing in mind that physical works of conversion can be relevant when considering whether a change of use has already begun.
7. The appeal site is the ground floor of a two storey end of terrace property. At the time of my site visit, there was no furniture or domestic paraphernalia present that would suggest the appeal property is currently being occupied for a residential use. In May 2023, permission was granted by the Council for the replacement of the window and door to the ground floor front elevation. No change of use was applied for or granted under that application. These works had been completed at the time of my site visit and the changes do provide for a domestic appearance, in keeping with other dwellings within the vicinity.
8. In November 2022 prior approval was refused for conversion of dog grooming premises to 1 single flat. This application was refused for the same reasons that are identified in the appeal proposal before me now. That application was subject to an appeal¹ which was dismissed in November 2023. The Inspector found in that case that, as a matter of fact and degree that the appeal property had been converted for residential use and occupation, albeit that it was not yet occupied. Regard was had to the physical state of the appeal property and the intended use. Whilst some time has passed since that appeal decision, it does confirm the view of the Inspector at that time that a change to residential use had commenced at the appeal property.
9. Since that previous appeal decision, in June 2024, the Council granted a lawful development certificate² (LDC) for the commercial use as offices under Class E at the appeal property. The Council refer to this LDC as for a proposed use not an existing use. There is limited information before me on this LDC and the evidence submitted to the Council in this respect. However, whilst the LDC indicates that the Council was satisfied that a proposed office use at the appeal property would be lawful it does not set out or confirm what the current use of the appeal property is.
10. I acknowledge that whilst some internal alterations are exempt from the definition of development under Section 55(2) of the Town and Country Planning Act 1990, internal alterations can be indicative of whether development consisting of a proposed change of use has commenced.
11. During my site visit I noted that the appeal property looked as though it had been recently decorated to a high standard. There were modern kitchen units in place that would be appropriate for a residential use. The internal wall proposed on the floor plans to create the bedroom space had been completed. A toilet was present as identified on both the existing and proposed plans, but there was no shower or bathing facilities. I note therefore that washing facilities would still need to be installed, nevertheless, this does not mean that the conversion works to create the residential use have not commenced, just that they have not been completed.

¹ APP/D1590/W/22/3312677

² Council Reference: 24/01004/CLP

12. The appellant asserts that the site was empty before, during and after the prior approval application period. However, at the time of my site visit, the front room was laid out with a treatment couch and the rear space was laid out as an office with a desk present. I note that both of these items of furniture could easily be removed and do not indicate that there is an active commercial use in operation or that there has been previously, before the prior approval application was made. I have no evidence of any business use, such as accounts, marketing, signage, invoices or any other information that would demonstrate that a Class E use has been in operation at the appeal property recently, taking into consideration the limitations set out under Class MA in this respect. I find that there has been an intention to change the use of the appeal property to a residential use, demonstrated through the associated planning history provided by both parties.
13. Taking all of the matters above in combination, in terms of the internal physical works completed, the current condition of the appeal property, the external works to replace the window and door, along with the clear intention to change the use, I find, as a matter of fact and degree, that works to convert the appeal property to residential use have commenced, notwithstanding that it may not be completed currently. The grant of an LDC for a proposed office use does not persuade me otherwise in the specific circumstances of this case.
14. Prior approval cannot be granted for a development that has already commenced, even if not completed or in occupation. I therefore find, for this reason, that the development falls outside of Schedule 2, Part 3, Class MA of the GPDO and is not therefore permitted development.

Other Matter

15. The appeal site falls within the zone of influence of a number of European sites protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations). Regulation 75 provides that it is a condition of the planning permission granted by the GPDO in these cases, that development which is (a) likely to have a significant effect on European sites, alone, or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the sites, must not begin until the developer has received written notification of the approval of the local planning authority under Regulation 77.
16. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provision of the GPDO. As such Article 3(1) of the GPDO effectively imposes a pre-commencement condition on all development that is permitted by the GPDO that would affect a European site and the proposed development cannot lawfully begin until the process set out in Regulation 77 has been completed. This is a separate process which is not required to be undertaken before prior approval is granted. Consequently, this matter is not determinative in this case.

Conclusion

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

G Dring
INSPECTOR