



Appeal Decision

Site visit made on 8 April 2025

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 20th May 2025

Appeal Ref: APP/T5150/W/24/3353800

97A Acton Lane, Brent, London NW10 8UT

- 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 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 Finkelstein against the decision of the Council of the London Borough of Brent.
 - The application Ref is 24/2261.
 - The development proposed is the change of use from the basement shop to residential.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Preliminary Matters

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 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 Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order, subject to limitations and conditions.
4. Where an application is made for prior approval for development, the local planning authority may refuse the application where it considers that the proposed development does not comply, or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions that are applicable to such permitted development.
5. The appellant's application form describes the proposed development as the change of use from the basement shop to residential. It further states that this would result in the net increase in 2 dwellinghouses. Additionally, the appellant's appeal statement describes the proposed development as prior approval for change of use of basement shop to 2x residential dwellings. However, the submitted plans for the basement (lower ground floor) level show only one studio flat, rather than two dwellings. It appears that the reference to two dwellings was

an error, as only one unit is shown on the submitted plans. The parties have confirmed as such.

6. Regardless, both appellant and the Council have addressed the proposal on the basis that it involves a single dwelling. There have been no substantive responses from interested parties. Given this, and in the absence of any indication that other parties would be prejudiced, I am satisfied that I can proceed on the basis that the proposal is for one residential unit.
7. The Council has referred to a site visit undertaken as part of the assessment for application ref: 24/2261, and it considers that the finished floor level of the ground floor does not correspond with the approved plans submitted under application ref 22/1066. Consequently, they consider that the lower ground floor plan shown on drawing no. E01, as part of this proposal, does not accurately portray what was observed on site. Nevertheless, while I acknowledge the Council's concerns regarding the accuracy of the plans, I am satisfied that the existing site plans are sufficiently precise for the purpose of assessing the main issues relevant to this appeal, specifically those matters which relate to the prior approval. Any issues regarding enforcement or the potential for additional residential use at the appeal site are a matter between the Council and the appellant.

Main Issue

8. The main issue is whether the proposed development would be granted planning permission by Schedule 2, Part 3, Class MA of the GPDO, and if it would, then whether prior approval should be granted.

Reasons

Space Standards

9. The appeal site is comprised of a ground floor commercial unit within a terraced parade. The submitted plans indicate that the property is arranged over four levels: a lower ground floor (basement), raised ground floor (ground floor), first floor, and loft level. The ground floor would be retained for use as a shop, while the basement would be converted to residential use.
10. Schedule 2, Part 3, Paragraph W (2) (bc) of the GPDO provides, in summary, that in relation to development proposed under Class MA, applications must be accompanied by a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses.
11. Article 3, (9A) of the GPDO states that schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse - a) where the gross internal floor area is less than 37 square metres in size; or (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.
12. The parties do not agree on the internal floor space measurements for the dwellinghouse, primarily due to differing views on whether the rear rooms should be included in the calculation. Nonetheless, while the submitted plans do include a scale, they do not clearly indicate the total floor space in square metres of each dwellinghouse, nor do they provide the dimensions of individual rooms, or details

of windows, doors, or walls as required. However, paragraph W (2) (bc) of Schedule 2, Part 3 of the GPDO states that the provision of this information is mandatory. Given this lack of information, it is not possible to confirm that the proposal complies with the relevant parts of this class, as compliance with these procedural requirements is a precondition to the grant of permitted development rights.

13. For this reason, the proposed development would not constitute permitted development in respect of Schedule 2, Part 3, Class MA.

Fire Risk

14. Criteria MA.2. 2(i) of the GPDO provides, in summary, that before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the Council will be required regarding the fire safety impacts on the intended occupants of the building, where the development meets the fire risk condition.
15. Article 2, (1) of the GPDO states that a building includes any structure or erection and includes any part of a building; and does not include plant or machinery, gate, fence, wall or other means of enclosure.
16. Criteria MA.3 of the GPDO states the development meets the fire risk condition if the development relates to a building which will (a) contain two or more dwellinghouses; and (b) satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMP).
17. Article 9A (3) of the DMP states that the height condition is that (a) the building is 18 metres or more in height; or (b) the building contains 7 or more storeys. Paragraph 7 states that for the purpose of paragraph (3) - (a) the height of a building is to be measured from ground level to the top floor surface of the top storey of the building.
18. I acknowledge the Council's concerns that the submitted plans indicate that a separate dwelling exists across the ground and first floors, which in combination with the proposed dwellinghouse in the basement, would result in the building containing two dwellinghouses. However, there is no evidence before me to suggest that the building is 18 metres or more in height or that it exceeds 7 storeys. As such, only one criterion under MA.3 is met, namely the existence of multiple dwellinghouses, but it does not meet the height condition and so the fire risk provision does not apply.
19. Based on the evidence before me, I am satisfied that the proposed development would not meet the fire risk condition and thus would not conflict with the limitations set out in this criterion.

Standard of daylight

20. As part of the scheme, a large window would be internally installed at the front of the ground floor, and a section of the floor would be fitted with a glazed floor panel. There are no clear indications that these works would require the installation of an external window that would require planning permission and would fall outside the permitted development rights of Class MA. The appellant has confirmed that this

would function as a lightwell, enabling the proposed studio living area to receive natural light.

21. Criteria MA.2. 2(f) of the GPDO states that before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the provision of adequate natural light in all habitable rooms of the dwellinghouses.
22. Schedule 2, Part 3, Paragraph W of the GPDO states that where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.
23. Schedule 2, Part 3, Paragraph X of the GPDO states that “habitable rooms” means any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.
24. The appellant’s Internal Daylight and Sunlight Assessment indicates that the daylight factor method results show that the main studio area of the proposed lower ground floor flat would meet the required daylight targets. Although the main kitchen area was excluded from this calculation, this approach is consistent with BRE guidance, given that it is linked to the main studio area. The assessment also states that the studio area would receive 2.25 hours of sunlight, exceeding the minimum target set out in the BRE guidelines.
25. The Council considers that, notwithstanding the labels shown on the plans, the additional rooms to the rear of the appeal site – identified as “linen storage”, “store” and “laundry room” – would, in all likelihood, be used as bedroom accommodation. Reference is made to a previous proposal (application ref: 24/1610), in which a bedroom was proposed in the same location now shown as a laundry room in the current scheme.
26. Having considered all the representations and the evidence before me, I acknowledge the Council’s concerns that the additional rear rooms could be used as bedrooms rather than for ancillary storage or utility purposes. These rooms are of a size and layout capable of supporting habitation, as evidenced in earlier proposals, and could accommodate a single bed. In a small or constrained site, the existence of multiple generously sized ancillary rooms, such as a linen store and laundry room, appears disproportionate. Additionally, the appellant has not provided a clear or functional explanation for the presence and size of these rooms.
27. Nonetheless, a condition could be imposed to prevent the rear rooms from being used as habitable space, which would align with the descriptions used in the plans. While the Council’s concerns are noted, I am satisfied that the proposal could potentially meet the relevant criteria, provided a clear, enforceable condition is imposed to secure the intended use. However, as this appeal fails on another grounds, it is not necessary for me to address this matter further.
28. Based on the evidence before me, I am satisfied that, subject to the imposition of a condition, adequate natural light could be secured in all habitable rooms.

External Alterations

29. As discussed above, Criteria MA. of the GPDO permits development which consists of a change of use of a building and any land within its curtilage. However, it does not grant permission for any external alterations to the building, such as the alteration of the new shopfronts. Any such operational development would require separate planning permission.
30. While the Council has expressed concerns that the implementation of the proposed development may necessitate external works, specifically the installation of a new shopfront, no such alterations are shown or described within the current application. The submitted plans and documents relate solely to the proposed change of use and do not propose any external building operations.
31. Based on the evidence before me, I am satisfied that the proposed development would not result in any external alterations to the building and thus would not conflict with the limitations set out in this criterion.

Other Matters

32. The appellant has referenced the need to promote the redevelopment of underused commercial spaces. They have also referred to the conduct of the Council in determining this application, with particular regard to a proposal¹ at a nearby site. However, as the appeal relates to prior approval, the matters for consideration are restricted to those set out in the relevant paragraphs of the GPDO. Therefore, these considerations fall outside the matters I am able to assess.

Conclusion

33. For the reasons given above, I conclude that the proposal is not permitted development and, the appeal should be dismissed.

S Lo

INSPECTOR

¹ Application ref: 24/2710