



Appeal Decision

Site visit made on 25 March 2025

by **R Kent BA (Hons) MTP DipM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

Appeal Ref: APP/Y1110/W/24/3357761

32 Okehampton Street, Exeter, Devon, EX4 1DY

- 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 B Blackburn (Wakeburn Ltd) against the decision of Exeter City Council.
 - The application Ref is 24/1172/PDCD.
 - The development proposed is described as “For the prior approval of the change of use of an auction house (Use Class E) to residential (5 Apartments) under Class MA Revised (scheme)”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As no description of development is included in the planning application form, the description in the banner heading above is taken from the Supporting Planning Statement submitted with the application.
3. The site is located within 10 kilometres of the Exe Estuary Special Protection Area. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for classes of development as set out in Schedule 2 subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017. This provides that it is a condition of any planning permission granted by the GPDO that development which is a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and b) not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of the approval of the local planning authority under Regulation 77. A Regulation 77 application may be submitted and determined separately to an application for prior approval and I have determined the appeal accordingly

Main Issue

4. The main issue is whether the proposal would be permitted development under Class MA, with particular reference to Class E of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) and to the ‘Technical housing standards – nationally described space standard’¹ (NDSS) in respect of apartment 1.

¹ ‘Technical housing standards -nationally described space standard.’ G March 2015 together with the notes added 16 May 2016 which apply to it.

Reasons

Class E

5. Class MA of the GPDO permits 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 UCO to a use falling within Class 3 (dwellinghouses) subject to various limitations, restrictions and conditions. It is a matter of dispute between the parties as to whether the use of the site falls within Class E.
6. Class E of the UCO includes use, or part use, for all or any of a number of purposes including “for the display or retail sale of goods, other than hot food, principally to visiting members of the public.” Therefore, to fall within class E there must firstly be a use, or part use of the premises for the display or sale of retail goods for sale. Secondly, the display or sale must be provided principally to visiting members of the public.
7. The evidence includes a written statement that the building has been used as an auction house since 1974 and that auctions have been run from the building both online and also where the general public can view items for sale and bid on them. The Council’s officer report also includes details of two auctions and a viewing held in June 2024 with two further auctions and a viewing held in November 2024.
8. On my site visit, I noted that some rooms were stacked with furniture, household goods, pictures and other objects. Some other items on both ground floor and first floor were laid out in a more organised fashion and displayed in small groups with individually numbered labels. Although the display and labelling of these small groups of items was consistent with them being auction lots, other items on both floors which also had numbered labels were stacked, sometimes in what appeared to be a haphazard manner, on other objects. It was not clear from what I saw or from the evidence if these other items were being displayed for sale or kept in the building for other purposes.
9. The appellant’s statement indicates that the building is open to the general public on weekdays from 9:00am to 5:00pm and that auctions and viewings are held on specific dates which are open to the public. Whilst the evidence indicates that auctions and viewings were held in June and November 2024, it does not demonstrate the number of visiting members of the public who attended those events in person. Nor does the evidence state the numbers of members of the public who visit the site in person between auctions to view or submit goods for sale.
10. The statement indicates that there is a formal auction area on the first floor where the public sit in front of the auctioneer and formally bid on items stored in the building. Whilst I saw some short rows of chairs near a computer terminal, the chairs were covered in boxes of objects. It was not clear from the evidence if this was the auction area referred to. Moreover, from my visit, the layout of the rooms and their congested nature, meant that the routes for walking around the rooms were narrow and did not feel conducive to visiting members of the public viewing items in the rooms.
11. A previous planning application on the site in 2021 described the use of the site as a storage building falling within use class B8. The evidence does not demonstrate that the use of the building has changed since that time. The appellant, however,

has pointed to a 2024 appeal decision in Kentford² and the case law referred to therein as new evidence about the nature of the use being carried on in the building. In particular, reference is made to the *LB Kensington and Chelsea* judgement³ quoted in that appeal decision which found that the use as auction rooms in that instance fell within Class A1 of the UCO (now incorporated into Class E).

12. I am not aware of the details of the auction use referred to in the judgement or the details of the Kentford appeal, which related to clinical services rather than use for auctions. Whilst the Inspector in the Kentford appeal found that people attending by appointment would still constitute visiting members of the public for the purposes of Class E, I have seen no compelling evidence to demonstrate that the auction use of the building in this appeal is principally for visiting members of the public, whether by appointment or on a drop in basis.
13. Therefore, on the balance of probabilities, I am not convinced that the use of the building is for the display or retail sale of goods, other than hot food, principally to visiting members of the public. As a consequence, on the evidence before me, I cannot conclude that it would constitute permitted development under class MA.

Space standards

14. The proposal would create 5 apartments at first and second floor level within the building. Apartment 1 would utilise the roof space within the northern section of the 'V' shaped building. The proposed elevation drawings and proposed section A-A on plan PFLD/SITE/20 revision 2 indicate that the apartment would have a pitched roof for its entire length with a shallow hip at its eastern end.
15. Article 3 paragraph (9A) of the GPDO states that Schedule 2 of the GPDO does not grant planning permission for, or authorise any development of, any new dwellinghouse that, amongst other things, does not comply with the NDSS. The GPDO definition of a "dwellinghouse" does not exclude a building containing one or more flats from the definition for the purposes of Part 3 (changes of use) of the GPDO. As class MA falls under Part 3 of the GPDO, paragraph 9A applies to the appeal.
16. Whilst the elevation and section drawings provide written dimensions for the proposed floor level of the apartment, they do not provide dimensions for the internal ceiling height. The NDSS require that the minimum floor to ceiling height is 2.3m for at least 75% of the Gross Internal Area (GIA).
17. The Council's officer report calculates that "only around 35%" of the gross internal floor area in apartment 1 would have a headroom height of at least 2.3m. Although the Council does not demonstrate how this calculation has been made, nor does the appellant's evidence demonstrate how the standard would be met. The section drawing indicates that the pitched roof would result in a sloping ceiling height on either side of the apartment which means that the apartment would not have a consistent ceiling height. The sides of the apartment nearest the external walls would have significantly lower ceiling heights than the central part of the apartment.

² APP/F3545/X/23/3334323

³ R v LB Kensington and Chelsea ex p Europa Foods Ltd 1996 WL 1090308 (1996)

18. The written dimensions of the proposed floor levels indicate the apartment would have a floor level of +10.45m AOD. The proposed second floor level on the southern wing of the building shown on section A-A would be +13m AOD. Deducting one dimension from another suggests that the central part of apartment 1 would have an internal ceiling height of at least 2.55m above the proposed floor level. However, this dimension would reduce significantly with the slope of the roof for the length of the apartment. From the evidence before me I cannot be sure that at least 75% of the GIA would reach the minimum 2.3m ceiling height set by the NDSS.
19. Paragraph W.(3) (b) of Part 3 of the GPDO indicates that an application may be refused where the developer has provided insufficient information. On the information before me I cannot conclude that the proposal would comply with the NDSS and be permitted development under Class MA.

Other Matters

20. Paragraph MA.2 of the GPDO requires that development permitted under Class MA is subject to a number of conditions. However, in view of my conclusion on the main issues, it is not necessary for me to consider whether the proposal would comply with those conditions in any further detail.

Conclusion

21. For the reason given above the appeal should be dismissed.

R Kent

INSPECTOR