



Appeal Decisions

Site visits made on 14 April 2025

by **C Harding BA (Hons) PGCert PGDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 June 2025

Appeal A Ref: APP/U5930/W/24/3352592

Health Centre, 36a Hurst Road, Walthamstow, Waltham Forest E17 3BL

- 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 J Gluck on behalf of Shivisi Investments Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 241824.
 - The development proposed is prior notification requirement under Part MA of the GPDO for the change of use of Class E space to form 2 apartments.
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Appeal B Ref: APP/U5930/W/24/3352587

Health Centre, 36a Hurst Road, Walthamstow, Waltham Forest E17 3BL

- 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 J Gluck on behalf of Shivisi Investments Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 241842.
 - The development proposed is Prior Notification requirement under Part MA of the GPDO for the change of use of Class E space to form 15 apartments.
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Appeal C Ref: APP/U5930/W/24/3352594

Health Centre, 36a Hurst Road, Walthamstow, Waltham Forest E17 3BL

- 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 J Gluck on behalf of Shivisi Investments Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 241826.
 - The development proposed is Prior Notification requirement under Part MA of the GPDO for the change of use of Class E space to form 1 apartment.
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Decision

Appeal A

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of Class E space to form 2 apartments at Health Centre, 36a Hurst Road,

Walthamstow, Waltham Forest E17 3BL in accordance with the application 241824 and the details submitted with it including plan nos HR.36a.EX.01, HR.36a.EX.02, HR36a.EX.03, HR36a.EX.04, HR36a.EX.05, HR36a,EX.05, HR.36a.PR.302, HR.63a.SP.2 and subject to the following condition:

1. The development hereby approved shall not be occupied until a scheme of pedestrian access has been submitted to and approved in writing by the local planning authority. The scheme will include a timetable for implementation. Thereafter, the pedestrian access shall be delivered in accordance with the approved details and timescale and remain available for use thereafter.

Appeal B

2. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of Class E space to form 15 apartments at Health Centre, 36a Hurst Road, Walthamstow, Waltham Forest E17 3BL in accordance with the application 241842 and the details submitted with it including plan nos HR.36a.EX.01, HR.36a.EX.02, HR36a.EX.03, HR36a.EX.04, HR36a, EX.05, HR.36a.PR.201A, HR.36a.PR.202, HR.36a.PR.203 and HR.63a.SP.1, and subject to the following condition:

1. The development hereby approved shall not be occupied until a scheme of pedestrian access has been submitted to and approved in writing by the local planning authority. The scheme will include a timetable for implementation. Thereafter, the pedestrian access shall be delivered in accordance with the approved details and timescale and remain available for use thereafter.

Appeal C

3. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of Class E space to form 1 apartment at Health Centre, 36a Hurst Road, Walthamstow, Waltham Forest E17 3BL in accordance with the application 241826 and the details submitted with it including plan nos Hr.36a.EX.01, HR.26a.EX.02, R.36a.PR.302, HR36a.EX.03, HR36a.EX.05, HR36a,EX.05, HR.63a.SP.3 and HR.36a.PR.401, and subject to the following condition:

1. The development hereby approved shall not be occupied until a scheme of pedestrian access has been submitted to and approved in writing by the local planning authority. The scheme will include a timetable for implementation. Thereafter, the pedestrian access shall be delivered in accordance with the approved details and timescale and remain available for use thereafter.

Preliminary Matters

4. As set out above, there are three appeals on this site. I have considered each on its individual merits. However, in order to avoid duplication, I have dealt with the three schemes together, except where indicated.
5. I have amended the descriptions of the developments in my decisions above, by removing those elements which do not relate to acts of development.

6. Article 3(1) and Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') grant planning permission 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*".
7. Paragraph MA.2(2) of the GPDO states that before beginning the development, that application must be made to the local planning authority for a determination as to whether prior approval will be required as to transport impacts of the development; contamination risks; effects on noise from commercial premises upon the intended occupiers of the development; the effect of the change of use on the character or sustainability of a conservation area; provision of adequate natural light; the impact on intended occupiers of the development of the introduction of residential use in an area that is considered important for general or heavy industry, waste management, or a mix of such uses; the effect of the proposal upon services such as nurseries and health centres; and where applicable, fire safety ('the prior approval matters').

Applications for Costs

8. Applications for costs in relation to Appeals A, B and C have been made by Mr J Gluck of Shivisi Investments Ltd against the Council of the London Borough of Waltham Forest. These are the subject of separate decisions.

Background and Main Issues

9. All of the appeals have a common reason for refusal centring on whether the proposals would comprise development permitted under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO.
10. Appeal B has an additional reason for refusal relating to internal space standards. The appellant has provided an amended plan¹ in relation to this, and the Council has indicated, that subject to this amended drawing, it considers that the matter is no longer in dispute. The indicated amendments are minor and being wholly in relation to internal arrangements, my consideration of them is unlikely to prejudice any other party. I have, therefore, had regard to this drawing in my consideration of the appeal, and I have no reason to disagree with the conclusions of both main parties in relation to it.
11. Therefore, the main issues are whether the proposals would be development permitted under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, and if so, whether prior approval should be given, with respect to the prior approval matters.

Reasons

Whether permitted development

12. Paragraph MA.1 sets out limitations to this class, including, at Paragraph MA.1(1)(b) that development is not permitted unless "*the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval*". The

¹ Proposed Ground Floor Plan HR.36A.PR.201A

list of uses provided at Paragraph MA.1(2) includes Class B1 (business) and Class D1(a) (non-residential institutions – medical or health services), and in relation to the period after 01 September 2020, Class E (commercial, business and service).

13. It is not a matter of dispute between the parties that the appeal property is a former health centre providing at various times care facilities and health service office space and I have no reason to disagree. The parties also agree that the building stood empty for around 4 years prior to the applications for prior approval being submitted.
14. It has been suggested that the abandonment of the previous use could be a factor, however no substantive evidence to demonstrate this is before me. The cessation of a use does not necessarily amount to abandonment, and while the occupation of the buildings ceased some time ago, there is no indication that the condition of the land and buildings would prevent the resumption of the previous use. Moreover, I have not been made aware of any intervening uses.
15. The appeal site is stated as being in the ownership of the appellant, and the planning history which amounts to several applications for prior approval, and the separate grant of planning permission for residential purposes indicates a preference of intention for future residential use. However, there is no obvious impediment to the resumption of the previous use, should this not occur. Therefore, I am satisfied that the previous use has not been abandoned.
16. The Council considers that due to the length of the period of vacancy, that the proposals fail to meet the limitations set out in Paragraph MA.1, as the building would not have been occupied for a continuous period of at least 2 years prior to the date of the applications for prior approval.
17. Paragraph MA.1 does not impose any requirement for a building to be occupied at the point of application for prior approval. Rather, on a plain reading of the paragraph, it requires the use of the building to fall within one of the nominated classes for a continuous period of at least 2 years prior to the date of the application. There is no stipulation as to when the previous use should have taken place, only that it must be “*continuous*” and “*for a period of at least 2 years prior to the date of the application*” and there is no reference to a rolling 2-year period or any indication that the paragraph should be interpreted in such a manner. There is no dispute that when the health centre was operating, that it did so for over 2 years and that it was a continuous use.
18. On this basis, I consider that the proposal would amount to development permitted under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO.

Prior approval matters

19. The Council has indicated that it considers the proposal to be acceptable in terms of contamination risk, flood risk, impacts of noise, the provision of adequate natural light in all habitable rooms and loss of services, and I have no reason to disagree.
20. The appeal site is not located within a conservation area, and the proposal would not meet the requirements set out in Paragraph MA.3 of the GPDO in relation to the need to consider fire safety. There is, therefore, no need for me to consider these particular matters further.

21. In relation to transport impacts, the Highway Authority has identified that the proposals would provide up to 43 parking spaces, which in all cases would represent a significant oversupply, that improved lighting is required to a pedestrian access from Hurst Road, that insufficient visitor cycle parking would be provided, and that a contribution towards sustainable transport initiatives should also be made. Interested parties have also raised concerns that this level of parking would increase congestion and encourage non-residents to make use of the site for parking.
22. The proposals would have a high level of parking provision. However, although the Highway Authority have identified that the site is located with a Controlled Parking Zone and would be expected to be a car-free development, I am also mindful that a similar level of parking provision already exists due to the former use of the appeal property, which could recommence without the need for any further planning permission.
23. It is stated that levels of traffic generated by the developments would exceed that associated with the previous use, but there is no substantive evidence before me to demonstrate this. Overall, and also having regard to the conclusions reached by the Council in this matter, I consider that the proposed level of parking provision would be unlikely to be materially harmful to the operation of the highway network or highway safety.
24. I note the concerns in relation to non-residents seeking to make use of the provided parking, however there is no evidence before me to indicate that this would be likely to be a significant issue, and in any event, the appellant would have separate controls as landowner to manage third-party parking within the site.
25. It is stated that the proposals fail to provide sufficient cycle parking for visitors. However, the evidence before me makes no indication as to the expected extent of such provision in relation to each proposal, or the justification for such a requirement. While this matter could potentially be addressed by planning condition, given the lack of detail before me, any conditions to this effect would be imprecise and unreasonable. Overall, I consider that the transport impacts of the proposals in this respect would not be harmful.
26. In relation to the site access, the Highway Authority, within its representations, identifies that a segregated pedestrian access is required. I saw that there is no separate pedestrian access to the site directly from Hurst Road, nor is one indicated on any of the provided drawings. There is an existing footpath from Hurst Road adjacent to the site entrance, included within the appeal site, but outside of the appeal property and is separated by a fence. A further footpath, also within the appeal site connects Forest Road to residential development in the vicinity of Trinity House, to the south. This footpath was inaccessible at the time of my site visit.
27. It is likely, therefore, that future residents or visitors arriving on foot would be required to share the vehicular access. Given the number of flats proposed, along with the level of parking provision, this arrangement would be likely to give rise, at times, to conflict between vehicles and pedestrians or wheelchair users. Without mitigation, this would be harmful to highway safety. However, given that the appeal site is adjoined by existing public footpaths on its southern and eastern boundaries, the issue can be adequately addressed by means of suitably worded planning conditions.

28. In relation to the requested contribution towards sustainable travel initiatives, I am mindful that Planning Practice Guidance ('PPG') advises that since development permitted by the GPDO should be generally acceptable by nature, planning obligations would not ordinarily be necessary. Furthermore, there is no substantive evidence before me in relation to the need for the contribution, or how the requested sum has been devised. Accordingly, I cannot be certain that such a planning obligation would be necessary to make the development acceptable or be fairly and reasonably related in scale and kind to the development. Such an obligation, would therefore, fail to meet the relevant tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
29. Overall, I consider that the transport impacts of the proposals could be acceptable, and that the proposals would otherwise be acceptable in relation to the other prior approval matters.

Other Matters

30. I note that the applications attracted letters of objection raising a number of issues. However, unlike with an application for planning permission, the matters for consideration under these prior approval applications are restricted to the conditions set out in Paragraph MA.2 (2), which does not include issues such as perceived fear of crime through anti-social behaviour, light pollution, effect upon wildlife or location of refuse bins. I have therefore limited my consideration to only those matters set out in the GPDO.
31. The appeal site lies within the Zone of Influence of Epping Forest Special Area of Conservation, which is a European designated site. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the Order and compliance with Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations").
32. In effect, Article 3(1) of the GPDO provides a pre-commencement condition which must be met, where the development would affect a European Site. This includes a separate application to the Council under Regulation 77 of the Habitats Regulations to allow the Council to undertake an appropriate assessment and, dependant on the outcome, determine whether the scheme could be undertaken as permitted development.
33. It is not clear from the evidence which is before me whether applications have been made to the Council under Regulation 77, however neither the GPDO nor the Habitat Regulations prescribe any sequencing of prior approval and Regulation 77 applications. As the requirements of both procedures must be met before the developments could lawfully commence, there is no requirement for me to carry out appropriate assessments in this instance, and no reason for me to consider these matters further as part of these appeals.

Conditions

34. Development under Class MA is permitted subject to conditions at Paragraphs MA.2.(5) and (6) which include that the development must be completed within a period of 3 years starting with the prior approval date; and that any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use

Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

35. I have attached a condition in relation to the provision of separate pedestrian access, in the interests of the transport impacts of the proposal. The Council's suggested condition in relation to the flats remaining in C3 use is unnecessary given the conditions set out in the GPDO.
36. I have not attached the Highway Authority's suggested condition in relation to entering into a Section 278 agreement as guidance within PPG indicates that planning conditions should not be used to require adherence with other legislation. Nor have I attached the suggested conditions relating to delivery times as the necessity for such conditions is unclear.

Conclusion

37. For the reasons given above, I conclude that the proposals would be permitted development and would be acceptable with regard to the prior approval matters. Therefore, the appeals are allowed and prior approval granted.

C Harding

INSPECTOR