



Appeal Decisions

Site visit made on 4 June 2025

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 10th June 2025

Appeal A Ref: APP/D1590/W/24/3353542

69 Hamlet Court Road, Westcliff-on-Sea SS0 7EU

- 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 Hananya Friedman against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 24/01228/PA64.
 - The development proposed is change of use from commercial floorspace (Class E) to 1 x self-contained flat (Class C3).
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Appeal B Ref: APP/D1590/W/24/3357479

69 Hamlet Court Road, Westcliff-on-Sea SS0 7EU

- 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 Hananya Friedman against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 24/01701/PA64.
 - The development proposed is change of use from commercial floorspace (Class E) to 1 x self-contained flat (Class C3).
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Decision

1. In respect of Appeal A only, 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) (the GPDO) for change of use from commercial floorspace (Class E) to 1x self-contained flat (Class C3) at 69 Hamlet Court Road, Westcliff-on-Sea, SS0 7EU in accordance with the terms of the application, Ref 24/01228/PA64 and the details submitted with it subject to the conditions in the attached schedule.
2. Appeal B is dismissed.

Applications for costs

3. An application for costs was made in respect of both appeals by Mr Hananya Friedman against Southend-on-Sea Borough Council. These are the subject of a separate decision.

Procedural Matters

4. As set out in the banner heading above, there are two appeals on the site. The same type of development is proposed but the internal layout identified in each case is different. I have considered each proposal on its individual merits, however, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated. I have taken the appeal site addresses above from the respective appeal forms rather than the planning application forms as they more succinctly identify the site location.
5. I note that the Council has referred to the scheme under Appeal A as being contrary to specific policies set out in the development plan and supplementary planning documents. However, the principle of development is established by the GPDO and provisions of Schedule 2, Part 3, Class MA of the GPDO do not require regard to be had to the development plan. Therefore, I have had regard to the policies of the development plan only in so far as they are a material consideration relevant to the prior approval matters at issue in this case. I have also given due regard to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval matters.

Main Issues

6. A main issue in respect of both appeals is whether the proposed development would constitute permitted development under Article 3, Schedule 2, Part 3, Class MA of the GPDO with particular regard to external works. An additional main issue in respect of Appeal A only is whether the proposed development would provide sufficient living conditions for future occupants, with regard to the provision of adequate natural light in the proposed bedroom. A further main issue in respect of Appeal B only is whether the proposed development would provide sufficient living conditions for future occupants, with particular regard to the internal floorspace of the bedroom area.

Reasons

Appeal A and B - External works

7. Class MA permits a change of use of a building and land within the curtilage, but not operations required to facilitate the change of use.
8. I witnessed during my site visit that there is an existing rear door which was boarded up. The appellant identifies that the glazing would be reinstated in this existing door in order to provide natural light to the rear of the property as part of the change of use. The Council contend that the reinstatement of the glazing in the existing rear door would constitute operational development and therefore would fall outside of the scope of Class MA of the GPDO.
9. Section 55 (1) of the Town and Country Planning Act 1990 (as amended) (the Act) identifies that development includes the carrying out of building, engineering, mining or other operations in, on, over or under land. However, Section 55 (2) of the Act states that certain operations shall not be taken for the purposes of the Act to involve the development of land, including the carrying out for the maintenance, improvement or other alteration of any building or works which affect only the interior of the building or do not materially affect the external appearance of the building.

10. To my mind, the reinstatement of panes of glass in order to restore an existing door are minor works that would amount to a repair or maintenance task that would not materially affect the external appearance of the building. Consequently, I do not find that the works to reinstate the glazing in the existing rear door, which would form part of the scheme in both Appeal A and B would amount to operational development. I therefore find that the proposed developments in both cases would constitute permitted development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, with particular regard to external works.

Appeal A – Natural light

11. The prior approval matters identified under MA.2 of Class MA include the provision of adequate natural light in all habitable rooms of the dwellinghouse. There is no definition provided within the GPDO as to what constitutes adequate natural light. The Council contend that there would be inadequate natural light provided to the proposed bedroom due to the presence of a rear lean to canopy and external staircase outside the existing rear door which would serve as the bedroom window.
12. The appellant has submitted an Analysis of site layout for Sunlight and Daylight Report (SDR). This concludes that daylight and sunlight in all rooms within the proposed flat would be of a better standard than recommended in the Building Research Establishment publication of Site Layout and Planning for Daylight and Sunlight, a Guide to Good Practice published in 2022 (BRE) and therefore the requirement for adequate natural light would be satisfied. Whilst the BRE is only guidance, the SDR, which suggests compliance with the standards, does form a material consideration.
13. The appellant has confirmed that the existing rear canopy and external staircase were taken into account when carrying out the SDR assessment. However, I accept that this is not clear from the drawings, or the commentary provided within the SDR. Nevertheless, I must look at all of the evidence including my site visit to make an overall judgement in terms of whether adequate natural light would be provided, in the interests of the living conditions of future occupants.
14. Once the existing door is repaired, there would be a reasonable area of glazing serving the proposed bedroom. During my site visit I noted the presence of a lightweight canopy of limited depth towards what would be the top of the existing rear door opening. Some of the reinstated glazing would sit above the canopy. The canopy would not therefore shield the entirety of the glazed area, thus limiting the effect that it would have on the amount of natural light entering the proposed bedroom.
15. I also viewed the external staircase. Whilst the staircase does sit in front of a corner section of the existing door, it is set away from the rear elevation and has gaps between the treads and balusters, meaning that light can penetrate through it towards the existing door. Therefore, whilst there would be some reduction in light reaching the existing door as a result of these external structures, I do not consider on balance, that they would result in inadequate levels of natural light reaching the proposed bedroom.
16. In coming to this view I have also had regard to paragraph 130 c) of the Framework which states that a flexible approach in applying policies or guidance relating to daylight and sunlight should be taken, where they would otherwise

inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

17. For the above reasons, I conclude that the proposed development under Appeal A would meet the criteria set out in MA.2 (f) of Class MA, Part 3 to Schedule 2 of the GPDO with respect to the provision of adequate natural light in all habitable rooms of the dwellinghouse.
18. Although not determinative in this case, the proposal would accord with Policies KP2 and CP4 of the southend on sea core strategy adopted December 2007 and Policies DM1 and DM3 of the Development Management Document July 2015 which seek, amongst other things, that amenities are protected, maintained and enhanced.

Appeal B – Internal floorspace

19. Paragraph 9A to Article 3 of the GPDO provides that Schedule 2 does not permit any new dwellinghouse where the gross internal floorspace is less than 37 square metres in size or there is not compliance with the nationally described space standard (NDSS) issued by the Department for Communities and Local Government on 27 March 2015. Paragraph 9B explains that the reference in paragraph 9A to the NDSS is to that standard read together with the notes dated 19 May 2016 which apply to it.
20. The NDSS sets out minimum size requirements for bedrooms stating that a double (or twin) bedroom is required under the NDSS to be at least 2.75 metres wide with a floor area of at least 11.5 square metres.
21. In the case of Appeal B, the appellant contends that it is a studio flat layout proposed rather than a one bedroom flat and therefore the criteria set out in the NDSS is not applicable in terms of the bedroom size requirement.
22. However, the bedroom area is identified on the floor plan as having solid walls on three sides with only one wall being a 'curtain wall/special door'. As such, it would form its own room, largely separate to the kitchen, dining and living space. It therefore would have the characteristics of a one bedroom flat rather than a traditional studio flat. From the evidence before me, it appears that the bedroom identified falls short of both the floor area and width requirements of the NDSS in this case.
23. Consequently, I find that the proposed development under Appeal B fails to comply with Article 3, paragraph 9A of the GPDO.

Other Matters

24. The Council has not raised concerns relating to any of the other prior approval matters set out under MA.2. of Class MA subject to a condition relating to the implementation of measures identified in the submitted Noise Assessment.
25. An interested party has raised comments about the Noise Assessment and how existing noise from neighbouring commercial uses, along with the specification of works proposed to mitigate any affects would not resolve the harm to future occupants. Nevertheless, the Council's Environmental Health Officer has not objected to the proposal and the Council has suggested a condition which would require post implementation testing in this respect so that it can be identified if

further mitigation measures are required. On this basis I am satisfied that the proposal would not result in unacceptable harm to the living conditions of future occupants in terms of noise.

26. Issues relating to the retail integrity and sustainability of the local high street do not form part of the prior approval matters. I note that there is a Conservation Area removed from the appeal site further along Hamlet Court Road and that an interested party raises that the appeal site and surrounding area should also be designated as a Conservation Area, nevertheless, this is not a matter before me as part of the prior approval process.
27. I note the comments received about the large shop window providing the light to the living space and the potential for future occupants to provide blinds for privacy or to locate furniture in front of this window. However, privacy, outlooks and the layout of furniture are not matters subject to prior approval.
28. The appeal site is located within the Zone of Influence of a number of European sites. The grant of planning permission under Article 3(1) of the GPDO is subject to the provision of the Order and compliance with Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations).
29. 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 Regulations to allow the Council to undertake an appropriate assessment and, dependent on the outcome, determine whether the scheme could be undertaken as permitted development.
30. Whilst I note that a receipt has been provided relating to a 'RAMS Essex Coast payment' with Appeal B, the Council has included under its third reason for refusal in relation to Appeal A, that no mitigation has been secured in respect of the requirements set out under the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document regarding European sites. However, neither the GPDO nor the Regulations prescribe a particular sequence that must be followed with regard to prior approval and Regulation 77 applications. As the requirement of both procedures must be met before the development could lawfully commence, there is no requirement for me to carry out an appropriate assessment in this instance, and no reason for me to consider this matter further as part of either of these appeals.

Conditions

Appeal A

31. Paragraph W (13) of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. I have considered the conditions suggested by the Council in relation to Appeal A in line with the requirements of the Framework and the advice in the Planning Practice Guidance.
32. 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. I have therefore not imposed the first two conditions suggested by the Council which would largely duplicate those already provided for under Class MA.

33. The provisions at Paragraph W (12) of the GPDO require that development must be carried out in accordance with the approved details, however in the interest of clarity and certainty I have attached a condition setting out the approved plans.
34. A condition relating to cycle storage is necessary to ensure that the transport impacts of the development are acceptable. I have imposed a condition to ensure that the scheme would not be occupied until the glazing is reinstated in the existing rear door, in order that sufficient natural light is provided to the bedroom. A condition relating to the implementation of noise mitigation measures in the interests of the living conditions of future occupants in relation to noise is reasonable and necessary. These conditions relate to prior approval matters set out under Class MA.
35. However, suggested conditions relating to ventilation and cooling, refuse and recycling storage and construction hours do not relate to the prior approval matters, and therefore I have not imposed them.
36. Informatives are suggested by the Council's Regulatory Services Department in relation to construction, asbestos and overheating and noise protection. I have not imposed these as they would have no legal weight, nevertheless, I am satisfied that the appellant has had sight of them given they were provided with the appeal documentation.

Conclusion

37. For the reasons given above, Appeal A is allowed and prior approval is granted. However, Appeal B is dismissed.

G Dring

INSPECTOR

APPEAL A - SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing nos E00, P01, P02, P03 and P04.
- 2) Prior to the occupation of the residential unit hereby approved, a scheme of secure, covered cycle storage for occupiers of the development shall have been submitted to and approved in writing by the Local Planning Authority under the provisions of this condition. The secure, covered cycle storage shall be provided on site and be made available for use by the occupants of the residential units hereby approved prior to their first occupation and shall be retained as such thereafter for the lifetime of the development.
- 3) Prior to occupation of the residential unit hereby approved, the reinstatement of the glazing in the existing rear door as identified on the proposed drawings shall be completed.
- 4) Prior to the occupation of the residential unit hereby approved,
 - The noise mitigation measures as detailed in the Report 'Noise Assessment' by Infinity Acoustics dated May 2024 shall have been implemented in full and shall be retained as such for the lifetime of the development.
 - Following implementation of the approved noise mitigation measures, a post completion noise survey must be undertaken and a report submitted to, and approved in writing by the Local Planning Authority. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set out in the Report.

If the mitigation measures tested in the post-completion report prove to be insufficient, additional noise mitigation measures (where necessary to ensure the appropriate noise levels can be met), shall be submitted and approved in writing by the Local Planning Authority and installed and tested prior to occupation.

The mitigation measures must be retained in perpetuity thereafter.