



Appeal Decision

Site visit made on 3 June 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

Appeal Ref: APP/X1165/W/25/3360468

2-4 Fore Street, St Marychurch, Torquay TQ1 4NE

- 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 OJ Developments against the decision of Torbay Council.
 - The application Ref is P/2024/0586.
 - The development proposed is change of use of premises in Use Class E to 3 dwellings in Use Class C3.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits 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).
3. Schedule 2, Part 3, Section W of the GPDO outlines the prior approval process and provides that a local planning authority has regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
4. There is no dispute between the main parties that the proposal meets the requirements set out in paragraph MA.1 of Class MA. I find no reason to disagree. Further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2).
5. One of those conditions is contained within (e). This concerns buildings located in a conservation area where the development involves a change of use of the whole or part of the ground floor. Here, an assessment of whether prior approval is required will be needed in respect of the impact of that change of use on the character or sustainability of the conservation area. The Council's reason for refusal relates to this issue. The Council does not contest compliance with the other requirements of this paragraph, and based on the evidence before me, I see no reason to disagree.

6. Accordingly, I consider the main issue to be whether the proposal would be permitted development with regard to the impact of the change of use on the character or sustainability of the St Marychurch Conservation Area (CA).

Reasons

7. The appeal site is located within the CA where there is a statutory duty to pay special regard to the desirability of preserving or enhancing its character or appearance. The Framework regards conservation areas as heritage assets and attaches great weight to their conservation. The significance of the CA is derived from its distinctive 19th century settlement patterns. These are made up from dispersed and contrasting sub areas including the town centre, within which the appeal site lies, terraced housing, and its villas.
8. The appellant makes the point that the proposal lies within a district centre rather than a local centre. Even so, while there are some residential units on the ground floors of some buildings in this town centre area and beyond, including the Old Town Hall, the section of Fore Street surrounding the appeal site is entirely made up of commercial units. These shop fronted terraces date from the 1860's, to the 1920's opposite. They include a mix of styles that provide a strong townscape to an early and once separate community which still retains a solid local identity. All but the unit 2 appeal building are recognised as key buildings in the Council's CA character appraisal. Despite the categorisation of this corner building, the appeal site forms part of a well-defined group that make a significant contribution to the sustainability and commercial character of the CA.
9. In that context, at the time of my late-morning visit, there was a certain hive of activity at this street, with well-attended cafes and plenty of customers walking in and out of shops. Even though commercial premises would remain in the close line of sight in the surrounding area, the loss of a good section of this characterful terrace to residential units on its ground floor would be likely to have a damaging effect on the vibrant sustainability of this particular part of the CA. As such, the scheme would irrevocably erode its historic commercial character.
10. In order for the proposed change of use to occur, the appellant is relying on a previous planning permission to make various alterations to the buildings, referencing an appeal¹ at Zenith House where this approach was taken. Part of the permitted works include the reconfiguration of their frontages to remove what is described as unsympathetic grey stone and metal window frame façade. Brickwork and rendered finishes would make up new, smaller proportioned shop frontages. These alterations would have an enhancing effect on the CA and there is little reason why the works will not be completed.
11. It is acknowledged that currently, the lack of commercial activity does little to contribute towards the vitality of the CA. In that respect, it is of note that the former bank has been vacant for about 4 years. While this is not an insignificant period, marketing has taken place based on the present unsympathetic appearance, which may well have put some prospective tenants off. Moreover, unit 2 has been vacant for a very short period of time and it is simply not known whether it would remain unoccupied in the longer term. Overall, while a residential occupation would make the street frontage marginally more active, it has not been convincingly demonstrated that the appeal buildings are unlikely to be

¹ Appeal Ref: APP/N1730/W/21/3278561

commercially occupied, particularly once the permitted changes have been implemented. This is a materially different set of circumstances to those put to me in an appeal at 7-9 High Street, Gillingham², which is also in a different location.

12. The development would cause less than substantial harm to the buildings' significance as a designated heritage asset. Paragraph 215 of the Framework explains that in such circumstances it is necessary to balance the harm against the public benefits of the proposed development. The proposal would provide additional homes built to appropriate space standards in a well-connected area. It would provide a temporary boost to the local economy during its construction and thereafter through consumer spending. These can all be considered public benefits.
13. Against the benefits I must weigh the harm to heritage assets. The Framework states that great weight should be given to the assets' conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to significance. Any harm to the significance of a designated heritage asset should require clear and convincing justification, as set out in paragraph 213 of the Framework.
14. In the heritage balance, I have given a good deal of weight to the benefits of housing delivery as this is supported by default within Class MA. I have given some more limited weight to the economic benefits. However, the adverse impact on the CA is a matter of considerable importance and weight. Overall, I consider that the harm to heritage asset outweighs the benefits.
15. I therefore conclude that the proposal would harmfully affect the character and sustainability of the CA, which means that it would not amount to permitted development in the terms set out in the GPDO.

Other Matters

16. I have paid regard to the comments made in respect of the content of pre-application advice, though I have assessed this scheme on its merits and within the remit of the GPDO.
17. There are a number of listed buildings nearby including the grade II Town Hall with a significance derived from its historic function and architectural detailing. Consequently, there is a statutory duty to pay special regard to the desirability of preserving their setting. The appeal proposal is separated from the Town Hall by an intervening road. Had I been otherwise minded to allow the appeal, no operational development would be carried out to the appeal building's frontages beyond that already permitted. Therefore, while the change in character and sustainability would be harmful to that part of the CA and its grouping, the scheme would have a neutral effect on the setting of the Town Hall, thus preserving it. Furthermore, the Council has not raised any concerns in this respect. Accordingly, I am satisfied the proposal meets the requirements set out in s.66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 (The Act).

Conclusion

18. For the reasons given, the appeal is dismissed.

² Appeal Ref: APP/D1265/W/22/3312041

J Hills

INSPECTOR