



Appeal Decision

Site visit made on 19 June 2025

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2025

Appeal Ref: APP/Y5420/W/25/3361481

Outbuilding, R/O 62 Willoughby Lane, London N17 0SS

- 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.
 - The appeal is made by Isaac Leibowitz against the decision of the Council of the London Borough of Haringey.
 - The application Ref is HGY/2024/2838.
 - The development proposed is application to determine if prior approval is required for a proposed: Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice utilises a different description of development to that found on the application form. The description given on the application form included superfluous information. In the interests of clarity, I have utilised the description of development as found on the decision notice.
3. The appeal is made pursuant to Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England), Order 2015 (as amended) (GPDO). Development is permitted under Class MA where it consists 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).
4. Paragraph MA.1 of Class MA sets out a number of requirements, including that the building must fall within one or more of the classes specified for a continuous period of at least two years prior to the date of the application for prior approval. 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.

Main Issues

5. It follows that the main issues are:
 - whether the existing use of the building is that of a commercial, business and service use;

- the effect of the proposal on flood risk; and,
- whether the proposal would provide adequate living conditions for future occupiers with regard to the provision of internal space.

Reasons

The existing use of the building

6. The appeal site is host to a double garage which is located behind 62 Willoughby Lane. The existing building has a typical appearance of a garage. It is of a simple form and hosts two openings which face onto Heybourne Road. However, during my site visit, the entrance points to this building were boarded up, with a tall construction type fence located along the site boundary and to the front of the building.
7. The planning history outlines that the appeal building was granted planning permission in 2009 at 62 Willoughby Lane, subject to planning conditions. The decision notice for this development was provided by the Council. Condition 4 of this permission stipulated that this garage shall only be used for the parking of private vehicles and shall not be used for any other purpose without prior permission of the Local Planning Authority. In following the planning history of the appeal site, no change of use appears to have been applied for the use of the building as a commercial, business or service use.
8. Nevertheless, it is contended that the site has been used for a business and service purpose for the secure indoor parking of private vehicles for individuals who do not necessarily reside at 62 Willoughby Lane. To support this claim, signed statutory declarations have been provided by interested parties in support of the appellant. However, these declarations are anecdotal and therefore, I am not convinced by this limited evidence alone that these garages have indeed operated with a business use.
9. An additional application was made in 2018 to convert the garage to a one-bedroom residential unit, amongst other changes to this building. The appellant contends that the Council did not find that the building was in use as a garage. In my analysis of the officer report of this decision, I note a response from the Transport Team. This response states that it is not clear whether the applicant had applied for a crossover, following the grant of planning permission for the building in 2009 and as such, it was not clear that the approved building had indeed been used as a garage.
10. It is reasonable to assume that the crossover in this situation relates to the provision of a crossover from Heybourne Road, across the pavement to the access door of the garage. During my site visit, I noted that no crossover has since been provided. Therefore, in following the reasoning provided in the officer report for the application made in 2018, this casts further doubt as to whether the building has indeed been used for a business or service use for the parking of private vehicles.
11. The history of the appeal site also suggests that several enforcement investigations have been carried out. It is contended that an investigation in 2019 found the building was being utilised for the storage of building materials. The complete findings of this investigation have not been provided. Nevertheless, it

would not be unusual for a domestic garage to be used for the storage of building materials once works had been completed.

12. Collectively, when all of these matters are taken into account, the evidence before me leads me to the conclusion that this building is not of a commercial, business or service use as listed under Class E. Most decisively, it follows that no formal decision to confirm that a lawful change of use of the building has been granted, as per the requirements of condition 4 of the planning permission which allowed for the construction of the garage. Therefore, the permitted development right granted under Class MA would not apply.
13. Consequently, I find that the proposal would fail to meet the requirement of Schedule 2, Part 3, Class MA, Paragraph MA.1 (b) of the GPDO.

Flood risk

14. The appeal site is located within Flood Zone 2 and therefore has a medium probability of a risk of flooding. The application was absent of appropriate flood risk information and therefore, no mitigation measures were outlined. During the appeal, the appellant has provided a three-page extract of a flood report. These extracts begin at paragraph 9.5 of the original report and therefore, this flood report is incomplete. Amongst other things, it critically does not contain important information such as a site address.
15. Nevertheless, paragraph 9.5 of these extracts suggest that a flood plan is devised with measures including the signing up to the Environment Agency flood warning service. Once signed up, it suggests that users should undertake certain measures before a flood, after a warning has been issued and after a flood has occurred. Whilst these measures are not unique to the context of this appeal, they are general measures that can be employed to combat the risks of flooding.
16. The conclusion of these extracts begins at paragraph 10. This conclusion finds that amongst other things, in the event of flooding, residents will have access to the first floor of the dwelling which provides a safe place of refuge. However, the building is single storey, with no upper floors in either its existing or proposed form. This is a critical flaw in this flood risk assessment.
17. The incomplete nature of this report and its critical failure to relate to the appeal proposal leads me to the conclusion that a site-specific flood risk assessment has not appropriately been undertaken. I therefore conclude that the proposal would fail to meet the requirements of Schedule 2, Part 3, Class MA, Paragraph MA.2(2)(c) of the GPDO.

Living conditions

18. Section 3 (9A) of the GPDO notes that Schedule 2 does not grant permission for, or authorise any development of any new dwellinghouse where the gross internal floor area is less than 37m² or that does not comply with the nationally described space standard.
19. The proposed change of use of the building would provide one bedroom and bathroom to the rear, with an access door from Heybourne Road and a kitchen and separate dining room to the front. The Council contend that the appeal building once converted would be measured at 39m² of internal living space. As

such, this would indeed fall short of the national space standards for two persons within a 1 storey dwelling.

20. However, the appellant contends that the proposal would be for the use of one person. The proposed plans indicate that a single bed would be provided within the bedroom. As such, at 39m², the proposal would meet the minimum national space standard requirement of 39m².
21. It therefore follows that the proposal would satisfy Section 3 (9A) of the GPDO.

Conclusion

22. For the reasons given above, the proposal would not satisfy Paragraph MA.1 (b) and Paragraph MA.2(2)(c) of Schedule 2, Part 3, Class MA of the GPDO.
Therefore, prior approval is not given. I conclude that the appeal is dismissed.

J Smith

INSPECTOR