
Appeal Decision

Site visit made on 8 September 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 September 2025

Appeal Ref: APP/D0121/W/25/3364481

131 High Street, Weston Super Mare BS23 1HN

- 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 GPDO).
 - The appeal is made by Fifty Property Development Ltd against the decision of North Somerset Council.
 - The application Ref is 24/P/2503/CM2A.
 - The development proposed is conversion of vacant retail unit (Use Class E) on ground, mezzanine and first floors to create 5no. studio apartments.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for an award of costs have been made by both main parties. These are the subject of separate decisions.

Preliminary Matters

3. I have amended the description of development used in my decision from the one in the Application Form to exclude superfluous wording that does not describe an act of development.

Background and Main Issues

4. Development is permitted under Part 3, Class MA 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) to a use falling within Class C3 (dwellinghouses) where it complies with paragraph MA.1. The Council refused the proposal on the basis that it had not been demonstrated that the building has lawful Use Class E or that it meets the requirements of paragraph MA.1.
5. Before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to a range of matters set out under paragraph MA.2.
6. Notwithstanding the fact that the Council determined the proposal does not constitute permitted development, the proposal was also refused on the grounds of flooding risks, impacts of noise from commercial premises on the intended occupiers of the development and the provision of adequate natural light in all habitable rooms.

7. In addition, the Council refused the proposal because the internal floor area of Flat 3 does not comply with the nationally described space standard, conflicting with Schedule 2, paragraph 3 (9A) of the GPDO which states that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse - (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.
8. Accordingly, the main issues in this appeal are:
 - whether the proposal would be permitted development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, and if found to be permitted development;
 - whether the proposed dwellings comply with the nationally described space standard;
 - the flooding risks in relation to the building;
 - the impacts of noise from commercial premises on the intended occupiers of the development; and
 - whether the proposal would provide adequate natural light in all habitable rooms of the dwellings.

Reasons

Whether permitted development

9. Under paragraph MA.1.(1) (b) development is not permitted by Class MA unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. Put simply, this only requires the timeframe of the use, in this case Use Class E, to have taken place for at least two years before the application was made. That the building has been vacant for three years before the application was made has no relevance to the appeal.
10. The appeal site relates to a vacant building comprising a ground, mezzanine and first floor, situated within in a predominantly commercial area in the central part of Weston-Super-Mare.
11. Planning permission¹ was granted in 1981 at the appeal site for 'change of use of first and second floors to a health and beauty clinic.' This confirmed that the site was previously used as an off-licence on the ground floor with offices on the first floor, used in connection with the off-licence.
12. Although the lawful use of the first and second floor is a health and beauty clinic, which would likely fall within Use Class E, insufficient evidence has been submitted to demonstrate that this use has taken place, such as (but not limited to) tenancy or lease agreements including the nature of the use, photographic evidence and business records confirming Use Class E. In the absence of such evidence, the proposed change of use cannot be considered compliant with the requirements of Class MA.

¹ Ref. 1421/81.

13. The appellant has submitted Council rates bills showing the appeal building is subject to business rates. However, these documents do not specify the use of the building or confirm Use Class E. Furthermore, the rates bills are for the period 1 April 2025 to 31 March 2026, after the prior approval application was submitted. Thus, the submitted Council rates bills do not provide sufficient evidence that the health and beauty clinic was implemented and sustained for a period of at least two years before the appeal application was made. On the evidence before me, I can see no other Council tax information to indicate that the entire building has been in Use Class E for the required period.
14. Furthermore, subsequent planning applications² indicate the first floor was used as residential accommodation. Therefore, contrary to the appellant's assertion, the planning history of the appeal site does not clearly demonstrate Use Class E throughout the building.
15. Planning permission³ granted for the formalisation of a shopfront on the ground floor of the appeal site confirms that the ground floor was used as a sandwich shop, which falls within Use Class E. However, there is nothing in the evidence submitted to indicate the other floors in the building have been in commercial use.
16. That the entire building has been under single ownership, does not, in itself demonstrate that the whole building has been in commercial use. Ownership and use are distinct planning considerations, and evidence of actual use of each part of the building is required to establish compliance with Class MA of the GPDO.
17. It has been drawn to my attention that the upper floors of the appeal building were previously used for cannabis cultivation. On the evidence before me, there is cause to have reasonable doubt about the lawfulness of the cannabis cultivation operation. As such, it does not materially affect my assessment of the proposal under Class MA of the GPDO.
18. While there is a separate appeal currently under consideration at the same site, this decision has been made on the basis of the evidence and planning merits specific to the present case.
19. It is not within the scope of this appeal to formally determine the lawful use of the building. If the appellant wishes to establish the lawful use, they should apply to the Council for a Lawful Development Certificate and submit appropriate supporting evidence.
20. Based on the limited information provided, I am unable to conclude with certainty that the entire building fell within Use Class E for a continuous period of at least 2 years prior to the date of the application for prior approval. Consequently, I cannot be satisfied that the requirements of Class MA.1 of the GPDO are met.
21. For the reasons given, the proposal fails to constitute permitted development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO.
22. As considerations in relation to prior approval under paragraph MA.2 are a follow-on condition stage, they can therefore only apply if the development is otherwise permitted development. As the proposal would fail to constitute permitted development under Class MA, it is not necessary, or appropriate, for me to

² Ref. 24/P/1501/FUL and 23/P/2753/FUL.

³ Ref. 07/P/2651/F,

proceed to consider the prior approval matters as it would not alter the outcome of the appeal.

Other Matters

23. The appeal site lies within the Greater Weston Conservation Area (the CA), but as I am dismissing the appeal for not being permitted development under the GPDO, there is no need for me to consider whether the proposal preserves or enhances the character or appearance of the CA.
24. I acknowledge that the proposal would support the development of under-utilised land and buildings through the conversion of currently vacant space above a shop, contributing to the supply of homes in the area. However, such matters fall outside the scope of the prior approval process, and my determination of this appeal may rest only on the criteria set out in the GPDO.
25. The Council's handling of the application has not factored into my decision, and I have determined the appeal only on the planning merits of the case.

Conclusion

26. For the reasons given above, the appeal should be dismissed.

U P Han

INSPECTOR