
Appeal Decision

Site visit made on 8 September 2025

by **L Gardner MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th October 2025

Appeal Ref: APP/M3645/W/25/3369313

Advertising Right, 254 Godstone Road, Whyteleafe, Surrey CR3 0EF

- 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 A Steinberg against the decision of Tandridge District Council.
 - The application Ref is TA/2025/483/NC.
 - 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

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 change of use of Class E space to form 1 apartment at Advertising Right, 254 Godstone Road, Whyteleafe, Surrey CR3 0EF in accordance with the application TA/2025/483/NC dated 24 April 2025 and the details submitted with it including plan nos GR.254.PR.01, GR 254.PR.03 and GR 254.EX.04.

Preliminary Matters

2. The description of the development in the banner heading above is taken from the application form. I have amended the wording in my formal decision to avoid repetition of the relevant legislation. I am satisfied that the main parties have not been prejudiced by this approach.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) requires any development of a new dwellinghouse permitted through Schedule 2 to have an internal floor area of at least 37m². The proposed plan annotates the flat as being 37.92m². It has been brought to my attention that a letting agent listing states the basement area as being 33.1m². However, the appellant has confirmed that additional floor space would be achieved through the removal of an internal staircase and the removal of storage cupboards. I am therefore satisfied that the floor space referred to on the submitted plan would achieve the minimum floor space required by the Order.
4. The appellant has referred to a previous prior approval application which the Council did not refuse based on inadequate natural light, despite the layout of the proposed flat being identical to the appeal proposal before me. Nevertheless, I understand that the previous application was refused due to the floor space of the ground floor flat not meeting relevant standards and therefore the previous application did not meet the requirements to be permitted development. It would

not have been necessary for the Council to go on to consider prior approval matters including natural light. Thus, a lack of refusal on this matter previously does not implicitly mean that it has been accepted that provision of natural light would be adequate.

Background and Main Issue

5. Under Article 3(1) and Schedule 2, Part 3, Class MA of the Order, planning permission is granted for the change of use of a building falling within use Class E (commercial, business and service) to Class C3 (dwellinghouse). This is subject to limitations and conditions, as set out in subsequent paragraphs of Class MA.
6. Before prior approval under Class MA of the Order can be evaluated, it is necessary to determine whether the proposal falls to be considered as permitted development. Notwithstanding the discussion above in relation to the floor space, the Council accepts that the building qualifies as permitted development under this class. Based on the evidence before me, I find nothing to contradict this conclusion.
7. In respect to prior approval matters, the Order requires assessment based on various factors including the transport impacts of the development, contamination risks, flooding risks, impacts of noise from commercial premises, and the provision of adequate natural light in all habitable rooms. The Council has assessed the proposal against each of the matters set out in paragraph MA.2 (2) of Class MA of the Order. Other than adequate natural light, the Council has found the proposal acceptable. I see no reason to reach a different judgement in this respect.
8. It therefore follows that the main issue is whether the proposal would provide its occupiers with adequate natural light to all habitable rooms of the dwellinghouse.

Reasons

9. The proposed residential flat would be within the basement of the building, with the ground floor being retained as a commercial use. I understand that the first floor of the building is already in use as a residential flat. The basement is served by three high level windows on the south facing side elevation of the building and one glazed door (accessed via steps) on the rear west facing elevation. The windows on the south elevation are directly adjacent to an access road. Beyond which, there is a two storey building with a blank gable elevation facing towards the site.
10. The internal layout proposed shows there to be one habitable room – a shared living and bedroom space. The application was accompanied by a Daylight and Sunlight Assessment, which although based on an earlier application for two residential flats, shows the proposed basement with the same layout as the appeal scheme before me.
11. The report sets out its consideration against the 2022 Building Research Establishment (BRE) guidance. This guidance sets specific minimum recommendations for daylight within habitable rooms, which are median illuminances, to be exceeded over at least 50% of the assessment points in the room for at least half of the daylight hours. Where a room is in shared use, as would be the case here, the highest target, in this case 150 lux, should apply.
12. The results for the internal daylight show that the main living space would achieve a median lux of 153 within 54% of the area. According to the floor plan, the

bedroom area would be at the back of the room and therefore would be in the part of the room which would receive the least natural light. Nevertheless, in achieving the required lux levels within at least 50% of the room, the proposal would meet the relevant guidelines.

13. Within their officer report, the Council included a sun path diagram for 31st December, raising concern regarding the level of winter sunlight which would reach the flat, partially based on the positioning of the adjacent building to the south. Notwithstanding that the positioning of the window in this diagram appears to be incorrect, BRE guidance is clear that an assessment of adequate sunlight should be based on a room receiving 1.5 hours of sunlight on March 21st.
14. The appellant has demonstrated at appeal stage that the proposed residential flat would achieve direct sunlight on March 21st, the level of which would be enhanced by the positioning of the rear glazed door which would receive sunlight in the afternoon / evening.
15. Although the level of natural light, received both as daylight and sunlight, would not be consistent throughout the internal living space, overall, it would achieve the guidance set by BRE. The Order makes no specific reference to the use of BRE guidance as a means of assessing adequate natural light. Nevertheless, it forms a useful tool in the assessment of this matter. In this case, the results of the assessment provided by the appellant lead me to conclude that the level of natural light which would be received to all habitable rooms within the flat would be adequate.

Other Matters

16. Letters of representation have been received from interested parties raising objection to the proposal for various reasons. However, unlike with an application for planning permission, the matters for consideration under this prior approval application are restricted to the conditions set out in paragraph MA.2 (2) of the Order. I therefore cannot consider matters such as neighbouring privacy, noise impacts to neighbouring occupiers, loss of a commercial use, ventilation, traffic fumes, precedence, antisocial behaviour or pressure on public services.
17. Reference has been made to Article 8 of the Human Rights Act 1998. However, human rights do not come into the determination as to whether something is permitted development, because that is a question of law to which the decision maker has no discretion. The prior approval matters for Class MA of the Order do not include neighbouring privacy, safeguarding or the loss of enjoyment of a neighbouring home. The grant of prior approval in this case is justified and proportionate under Article 8(2) by the general benefits of the legislation.
18. Concerns have been raised in relation to the transportation impacts of the proposal which is one of the considerations within paragraph MA.2 (2) of the Order. The Council has accepted that given the sustainable location of the site, the proposal can be delivered without parking provision. I see no reason to take a different view on this matter.
19. I note the concerns raised in respect to pedestrian and vehicular visibility due to the implied positioning of a refuse and cycle store at the front of the site. However, these would amount to operational forms of development which would require separate planning permission and are outside of the scope of the appeal before

me. Even without the ability to secure the provision of cycle storage, I have identified no adverse transportation impacts of the development, particularly in relation to ensuring safe site access.

Conditions

20. Paragraph W(13) of the Order allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. As paragraph MA.2(5) of the Order stipulates that the development shall be complete within a period of 3 years, a condition is not required in this regard. The provisions at Paragraph W(12) of the Order require that development must be carried out in accordance with the approved details. As such, there is no reason for me to impose any additional conditions.

Conclusion

21. For the reasons given above, the appeal is allowed, and prior approval is deemed to be granted.

L Gardner

INSPECTOR