



Appeal Decision

Site visit made on 31 July 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 January 2026

Appeal Ref: APP/Z5630/W/24/3357903

Highwood House, 18 Park Road, Kingston upon Thames KT2 6BG

- 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 Ajmera Corporation UK Ltd against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 24/02138/PAMA.
 - The development proposed is described as 'Prior notification for change of use of part of an existing building from Use Class E to 5nos dwelling (Use Class C3) at ground floor, first floor and second floor'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has sent me a copy of a previous appeal decision relating to this site (APP/Z5630/W/24/3352498, dated 4 April 2025). Whilst this was sent to me after the date for final comments on this appeal (4 March 2025), I have considered this submission against the criteria in the *Procedural Guide: Planning Appeals – England*¹ and note that it is not already covered in evidence and that it is directly relevant to this appeal. I do not consider that any party would be prejudiced by me accepting this document.
3. The appellant has submitted a unilateral undertaking pursuant to the Town and Country Planning Act 1990 (as amended) which would restrict occupants from being issued with car parking permits by the Council.

Main Issue

4. The main issue is whether the building had been used for Use Class E purposes for a continuous period of at least 2 years prior to the date of the application for prior approval.

Reasons

5. 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), planning permission is granted for the change of use of commercial,

¹ <https://www.gov.uk/government/publications/planning-appeals-procedural-guide/procedural-guide-planning-appeals-england>

business and service uses to dwellinghouses subject to a number of limitations and conditions.

6. According to paragraph MA.1.(b), development is not permitted unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) – which include Class E use – for a continuous period of at least 2 years prior to the date of the application for prior approval.
7. The building which is the subject of this appeal was granted planning permission under reference 16/12324/FUL. It was certified as being completed to ‘shell only’ state by a building control inspector on 18 May 2021 and all pre-commencement conditions were discharged by 29 June 2022. The appeal application was dated 28 August 2024 and was validated on 29 August 2024. Thus, at least 2 years have elapsed between the date when the last of the pre-commencement conditions was discharged and the date of the application for prior approval. However, the building has never been occupied. Therefore, the critical question in this case is whether, and if so, when, the lawful use of the land began.
8. I have been referred to *Welwyn Hatfield BC v Communities and Local Govt Secretary* [2011] 2 AC 304 which discusses the approach taken in *Impey v Secretary of State for the Environment* [1980] 47 P&CR 157 in respect of when a use may have been begun. Lord Mance held in *Welwyn* that: *“too much stress... [has] been placed on the need for “actual use”... it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is.”* Thus, it is not necessarily the case that there has not been a change of use simply because a building has not been actively occupied. Rather, regard must be had to two factors: the physical state of the premises and the actual, intended or attempted use. Neither factor is decisive, and it should not be assumed that a change of use has not occurred simply because a building is unoccupied.
9. In respect of the appeal site, in APP/Z5630/W/24/3352498 the Inspector stated: *“The building has been fitted out to enable occupation for Class E use and, whilst it has never been occupied, based on my observations and the information submitted there is nothing substantive to suggest that this permission was not lawfully implemented in accordance with the planning permission. Therefore, I am satisfied that the building use falls under Class E.”*
10. However, the decision does not elaborate on any factors that may have informed the conclusion that the building had been fitted out to enable occupation and I have not been provided with any of the information that was made available to the Inspector. Therefore, I have based my decision on my own inspection of the building and the information that has been submitted in relation to this appeal.
11. When I visited the appeal site there were no signs that it had been or was being used for Class E purposes. No fit-out works had been undertaken in the building, for example the walls comprised unfinished plasterboard with visible joints and screws. The floors were unfinished and there was no floorcovering. There was a step between the unfinished floor area and the stair / lift core on each floor meaning that there was not full level access within the building. There were no doors, or even doorframes, in the openings between different spaces in the building.
12. On the ground floor there was an area containing electrical equipment such as a meter and a consumer unit / fuse box. However, apart from temporary lighting in

the stairwell and emergency light units, I did not see any lighting / light fixtures on any of the three floors. Similarly, I did not observe any electricity sockets. Furthermore, there were no toilets / sanitary / welfare facilities in the building. I would expect to find at least some of these facilities in a building that had been fitted out and was capable of being used for any of the purposes within Use Class E.

13. In relation to the intended use of the building, my attention has been drawn to what was said in *Impey* about a property is being marketed for occupation, namely that where operations are undertaken to convert premises (in that case) for residential use and they are then put on the market as being available for letting: “*Nobody is using those premises in the ordinary connotation of the term, because they are empty, but there has plainly, on those facts, been a change of use*”.
14. In its Statement of Case the appellant has said that marketing of the building for Class E uses began in 2021 but that there has not been any meaningful interest from prospective tenants and as such, the site has been vacant since completion in May 2021. However, marketing can take place even before a development has been completed and, therefore, evidence of marketing does not in itself prove that a development is capable of being used.
15. I have also been provided with a letter (dated 23 August 2024) from a property agent which expresses the opinion that the building is ready for occupation for commercial use but there is no explanation in that letter as to why this conclusion has been reached.
16. Even if the building had been completed when it was marketed, as discussed in *Blacker v Secretary of State for the Environment* [1983] JPL 167, ‘actual use’ remains a factor and use must be more than squatting or camping out; it is necessary to look at the evidence in the round with regard to the physical state of the building at the relevant date and the actual use of the building at that date.
17. Taking all of the evidence in the round and as a matter of fact and degree, and whilst I am satisfied that the permitted use of the building is Class E, I do not find that the building provides viable facilities for occupation for Class E purposes, whether in whole or in part, and therefore the use of the building for Class E purposes has not yet begun. Furthermore, I have not been presented with any information which illustrates that the building (or part of it) was ever made available for occupation for a use or uses within Class E, or that it had been finished to a state such that it was capable of being occupied for Class E purposes.
18. Therefore, I do not find that a material change of use has taken place. Accordingly, the use of the building has not fallen within Class E for a continuous period of at least 2 years prior to the date of the application for prior approval and, therefore, the appeal scheme is not permitted development.

Conclusion

19. For the reasons given above the appeal should be dismissed.

P Burley

INSPECTOR