



## Appeal Decision

Site visit made on 13 November 2025

**by R Lawrence BSc (Hons), PGDip (TP), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 January 2026

### **Appeal Ref: APP/E5900/W/25/3370640**

### **181-183 Bow Road, Tower Hamlets, London E3 2SJ**

- 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) Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- The appeal is made by Tareave Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref is PA/24/02243/A1.
- The development proposed is Change of use from commercial floorspace (Class E) to 39 no. self-contained units (Class C3) with associated cycle and refuse storage, and blue badge parking bays.

### **Decision**

1. The appeal is dismissed.

### **Background and main issues**

2. Schedule 2, Part 3, Class MA, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) provides for a permitted development right for the change of use of a building from a use within Class E (Commercial, Business and Service) to class C3 (dwellinghouses) where it complies with paragraph MA.1.
3. 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.
4. The Council refused the proposal including on the basis that it had not been demonstrated that the building has a lawful Use Class E in accordance with the requirements of paragraph MA.1(b).
5. In addition, with reference to paragraph MA.1, an interested party contends that one of the appeal buildings, 181 Bow Road, forms part of land within the curtilage of the Grade II listed church of St Catherine of Siena, in conflict with criteria MA.1(1)(d)(ii). The main parties' comments have been sought on the matter, and I have had regard to the responses received.
6. Notwithstanding the fact that the Council concluded that the proposal would not constitute permitted development, the proposal was also refused on the grounds of insufficient information to demonstrate that the proposal would provide adequate natural light in all habitable rooms.
7. There were two additional reasons for refusal, included on the Council's decision notice, these related to inaccuracies within the submitted plans, and linked to that, the extent of physical alterations necessary to undertake the prior approval. However,

as part of the appeal, the appellant has submitted amended plans which the Council are satisfied now provide an accurate representation of the appeal site and are sufficient to overcome its concerns in those reasons for refusal.

8. The amended plans, which correct drafting inconsistencies, do not alter the detail of the proposed development itself. I am satisfied that the proposal, as shown on the amended plans, remains essentially the same scheme that was considered by the Council. Both main and interested parties have had the opportunity to comment on the amended plans as part of the appeal process, and accordingly my consideration of the plans would not cause any procedural unfairness to anyone involved in the appeal.
9. In light of the above, the main issues are:
  - whether or not the proposal would be permitted development under class MA.1, with particular regard to the use of the building and whether or not it forms land in the curtilage of a listed building, and if the scheme would be permitted development,
  - whether or not there is sufficient information to demonstrate that the proposal would provide an adequate provision of natural light to all habitable rooms of dwellings.

## Reasons

### *Whether or not permitted development*

10. Under paragraph MA.1(1)(b) development is not permitted unless the use of the building falls within one or more of the classes specified for a continuous period of at least 2 years prior to the date of the application for prior approval. Put simply, this requires the appellant to demonstrate the appeal buildings were in use under Class E for at least two years before the prior approval application was made. The Planning Practice Guidance confirms that the onus of proof lies with the applicant.
11. The appeal site comprises artist studios, workshops and offices. Parts of the buildings are excluded from the scope of the appeal scheme including an art gallery (Nunnery Gallery), a café and residential uses. No. 183 is occupied by Bow Arts Trust for artist studios and workshops.
12. The appellant refers to the long-standing occupation of the appeal buildings by Bow Arts since 1994 and cites planning permissions from 2004 and 2013 to support the case that the site, either as a whole or as individual units, falls within Class E. However, these permissions pre-date the relevant two-year period preceding the application and therefore carry limited weight in establishing the lawful use during that timeframe. Legal submissions by the appellant acknowledge that historic permissions are not a substitute for evidence of continuous use. The planning history before me does not conclusively determine the lawful use of the building, nor its use over the last two years, with most references significantly predating the period in question.
13. It is accepted that offices fall within Class E, and the majority of the floorspace is described as comprising studios and office space. Artist studios are contended to constitute an industrial process capable of being carried out without detriment to residential amenity, which would fall within Class E(g)(iii). This point is noted.

14. The display of works of art otherwise than for sale or hire does not fall within Class E. While submissions indicate that artwork sales occur on site, there is little evidence of the scale of such sales or the extent of any retail operation relative to the display function.
15. Despite the omission of the gallery and café from the appeal scheme, the evidence before me indicates that these elements have played an integral role in the use of the appeal buildings and may be relevant to understanding the overall character of the use during the relevant period. Applying the principles in *Burdle v Secretary of State [1972]*, the evidence points to the possibility that the gallery and café, together with the artist studios, form part of a single planning unit, potentially indicating a composite or mixed use.
16. Further, an interested party refers to the hosting of community events and education programmes, although the appellant disputes any community-type function. Without detailed information, it is difficult to assess the influence of these activities on the primary use of the buildings, however, they could support an interpretation of a mixed-use, *sui generis* character. The evidence suggests a degree of interdependence between the various activities: resident artists' work is displayed in the gallery; visitors use café facilities; the café itself hosts artwork sales and displays; and the buildings accommodate community and educational programmes. This could point towards a single, integrated arts centre rather than discrete planning units. The long-term occupation by Bow Arts supports this interpretation.
17. The evidence before me raises reasonable arguments that the artist studios and offices could have formed part of a wider mixed-use arts centre over the relevant two-year period. While neither the Council nor interested parties have produced substantive evidence to demonstrate that the use falls outside Class E, and whilst the burden of proof lies with the appellant, these factors contribute to the uncertainty surrounding the precise nature of the use.
18. In the absence of a certificate of lawful use or a recent planning permission establishing the lawful use of the site—and specifically its use during the last two years—I am left with reasonable doubt that the appeal buildings have been in Class E use for the continuous two-year period required by MA.1(1)(b). This conclusion aligns with the principle in *R (Smolas) v Herefordshire Council [2021]*, which confirms that prior approval cannot be granted where definitional prerequisites are not evidenced.
19. It is not within the scope of this appeal to formally determine the lawful use of the buildings. Should the appellant wish to establish their lawful use, it is open to them to make an application to the Council for a Lawful Development Certificate under sections 191/192 of the Town and Country Planning Act 1990, accompanied by sufficient, precise and unambiguous evidence, as required by PPG.
20. From the evidence before me and taking all matters into account including the legal opinion from Richard Harwood KC, I cannot be certain that the appeal buildings have been in use for a continuous period of 2 years prior to the date of the application.
21. In addition to the matter of use, it is contended that No. 181 Bow Road falls within the curtilage of the listed church of St Catherine of Siena, if so, this would present a

further failing under Class MA, as paragraph MA.1(1)(d)(ii) excludes development involving a listed building or its curtilage.

22. Turning to whether 181 Bow Road, forms part of land within the curtilage of the Grade II listed church of St Catherine of Siena, I have had regard to both the main parties submissions and the heritage assessment provided by an interested party, which argues for curtilage status based on historic physical and functional links.
23. Historic England<sup>1</sup> advises that the curtilage of the principal building is in general terms, any area of land and other buildings that is around and associated with that principal building. It goes on to state that the courts have said that there are 3 key factors to be taken into account in assessing whether a structure is within the curtilage of a listed building: (1) The physical layout of the listed building and the structure, (2) their ownership, both historically and at the date of listing, and (3) the use or function of the relevant buildings both historically and at the date of listing.
24. Based on the limited documentation provided, it appears to me that by the time the church was listed in 2017, the appeal property was in a separate ownership and use to the church. Therefore, despite the properties having a historic relationship through former links to the Dominican Sisters and Victorian social mission, the test with regard to ownership and function at the time of listing does not appear to be met. This interpretation aligns with the principle in *Egerton v Taunton Deane BC [2008]*, which confirms that ancillary use must persist at the time of listing.
25. This is further supported by the listing entry for the Church of Siena, which states that save for structures specifically identified as such, other structures attached or within the curtilage of the listed building are not to be treated as part of the listed building. However, I acknowledge that the evidence indicates that 181 Bow Road was historically connected to the church via internal openings, shared circulation, and a presbytery function until the early 2000s. The heritage report also highlights that the buildings were repaired concurrently after WWII bomb damage and may have been designed or extended by Gilbert Blount or Alfred E. Purdie, which could indicate a historic architectural and functional association.
26. Whilst there is evidence of a historic relationship, I find the decisive factor to be the position at the time of listing in 2017, when ownership and functional ties had ceased and physical connections had been blocked. Therefore, on the balance of probabilities, at this current point in time, based on the evidence before me, I am not persuaded that No 181 should be regarded as curtilage listed. I also note that the Council has confirmed it does not consider the appeal site to fall within the curtilage of a listed building.
27. Nonetheless, given my findings in relation to the use of the buildings, the proposal fails to constitute permitted development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO.
28. As the proposal would fail to constitute permitted development under Class MA, it is not necessary, or appropriate, for me to proceed to consider the prior approval matters set out in Class MA.2(2) as it would not alter the outcome of the appeal.

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<sup>1</sup> Historic England Advice Note 10: Listed Buildings and Curtilage

### **Other Matters**

29. An interested party suggests that the appeal building has sufficient historical and architectural significance to warrant statutory listing. I recognise that both buildings are locally listed and make a positive contribution to the Fairfield Road Conservation Area. While these factors underline the site's local heritage value, the formal designation of buildings as listed is a matter for the Secretary of State for Culture, Media and Sport, acting on the advice of Historic England, and is therefore outside the scope of this appeal.

### **Conclusion**

30. For the reasons given above, the appeal is dismissed.

*R Lawrence*

INSPECTOR