



Appeal Decisions

Site visit made on 10 March 2026

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 8th June 2026

Appeal A Ref: APP/Y0435/X/24/3352518

349 South Row, MILTON KEYNES, MK9 2FY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Avon Group Ltd against the decision of Milton Keynes Council.
- The application ref 24/00249/CLUP, dated 31 January 2024, was refused by notice dated 25 March 2024.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is Implementation of Prior Approval 21/03811/PANOTH.

Appeal B Ref: APP/Y0435/W/24/3354265

349 South Row, MILTON KEYNES, MK9 2FY

- 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 Avon Group Ltd against the decision of Milton Keynes Council.
- The application Ref is 24/01719/PRIOR.
- The development proposed is Prior Approval for change of use of Class E to 7 x Residential flats (Class C3).

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Applications for costs

3. The Appellant made applications for costs against the Council in respect of both appeals. These applications are the subject of separate decisions.

Appeal A

4. The appeal property is the ground floor of a five-storey building within Central Milton Keynes. The floors above the ground floor are residential units. The last use had been as a gymnasium before an application Ref. 21/03811/PANOTH was made for prior approval under Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO) for the proposed change of use of the building from Class E Commercial, Business and Service to 7 x residential units (Class C3).

The Council did not determine the application within the requisite period, hence the Class MA condition requiring prior approval before beginning development was deemed to be discharged.

5. However, Article 3(4) of the GDPO provides that it does not permit development that is contrary to any condition imposed by any express planning permission. The gymnasium use was granted permission in 2011 subject to condition 5 stating:

The premises shall be used for a gymnasium and for no other purpose whatsoever, including any other purpose in class D2 of the schedule to the Town and Country Planning (Use Classes) Order 2010 or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that order.

The reason for the condition was: *Other D2 uses may not be appropriate in this location and would need to be assessed in light of the impact on the character of the area, neighbouring amenity and the highway in the interests of policies D1, D2, T210 and T15 of the Milton Keynes Local Plan 2001 - 2011.*

6. Hence if the condition prevents the operation of the GDPO, so far as changes of use are concerned, the proposal would not be permitted development. The Council considered that it does, and so refused the LDC application. The main issue is whether the Council's decision was well founded.
7. The Court of Appeal considered a similar condition in the case of *Dunnett*¹, reviewing the relevant case law. The condition in that case was "*This use of this building shall be for purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained.*" The reason for the condition was "*In order that the Council may be satisfied about the details of proposal due to the particular character and location of this proposal.*"
8. It found that this condition, read with the reason for its imposition, excludes the right to change the use of the relevant land under the GDPO. The change of use involved was from Class B1(a) (offices) to Class C3 (dwelling houses). It was acknowledged, however, that to exclude the application of the GPDO, the words used in the relevant condition, taken in their full context, must clearly evince an intention on the part of the local planning authority to make such an exclusion.
9. It is claimed in this case that the condition only excludes changes of use within Class D2, but such changes of use would not have involved the GDPO in any case. That proposition ignores the effect of the term "and for no other purpose whatsoever", and in fact the appellant provides no explanation for the inclusion of that term in the condition. As pointed out in the *Dunnett* judgement, "if the purpose was merely to exclude rights under the UCO, leaving those under the GPDO, the condition could more easily have said so." This phrase was considered to be "not.....merely emphatic of the scope of the planning permission, but is rather a clear and specific exclusion of GPDO rights." I see no reason why the same meaning should not be construed in this case. I consider that that is how a reasonable reader would understand the words to mean when reading the condition in the context of the reason for the condition, relevant

¹ *Dunnett Investments Ltd v SSCLG* [2017] EWCA Civ 192

planning legislation at the date it was imposed, the other conditions and of the consent as a whole.

10. Notwithstanding that the condition was defended on car parking grounds only in a recent section 73 application and appeal² seeking to permit the development without the condition, the reason clearly expresses an intention on the part of the Council to be in a position to assess any alternative proposed uses against development plan policies concerned with wider considerations, and of course there have been significant changes in the policy and statutory context in the meantime. I note an appeal decision³ referred to by the appellant which found that a similarly worded condition did not exclude GDPO rights, but that decision was finely balanced and ultimately turned largely on the reason for the condition, which was more specific about the matters the Council wished to maintain control over.
11. The appellant also argues that the *Dunnett* judgement placed considerable importance on the use of the phrase “without express planning consent from the Local Planning Authority first being obtained”, which is absent from the appeal condition. However, I do not consider those words to be essential. In *Dunnett*, which considered them in detail, they were considered to make the exclusion of GDPO rights “more abundantly clear” rather than having a specific functional role in the exclusion of automatic or direct GPDO rights.
12. In short, I am satisfied that the condition precludes GDPO permitted development rights, and it follows that the Council’s refusal to issue the LDC was soundly based. In coming to this view I note that the Council, in its statement of case, which followed the appeal granting permission for the original development without imposing condition 5, considered that it was not expedient to dispute the appeal, in part because it considered that the condition was not fully consistent with the reason given for imposing it. I consider, however, that, having regard to the relevant legislation at the time it was imposed the Council was clearly expressing an intention to retain express control over any change of use, having identified the character of the area, neighbouring amenity and highways impacts as matters that could be affected. In interpreting the effect of the condition I am primarily concerned with what a reasonable reader construing the condition, in the context of the planning permission as a whole, would understand, in a common sense way.
13. Had I come to the contrary view and found that planning permission for the development the subject of application 21/03811/PANOTH had in fact crystallised, the date by which it would have had to have been completed has now passed, so the LDC could not in any case have been granted in the terms of the application.
14. For the reasons given the appeal cannot succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

15. The section 73 application noted above for the original development without the original condition 5 was allowed and a new planning permission granted for “the

² Appeal Decision APP/Y0435/W/23/3319661

³ Appeal Decision APP/N5090/W/18/3197410

additional use as health/fitness/leisure unit within Use Class D2(E) in addition to approved uses for units without complying with a condition attached to planning permission Ref 11/02285/FUL". Hence GDPO permitted development rights became available to the appeal property. This appeal concerns the refusal of an application for prior approval under Class MA for a change of use of the ground floor of the property to 7 Class C3 flats. Among the matters specified in Class MA condition MA.2(2) are the provision of (f) adequate natural light in all habitable rooms of the dwellinghouses, (d) the impacts of noise from commercial premises on the intended occupiers of the development, and (a) transport impacts of the development. The Council considered that insufficient information had been submitted to determine compliance with MA.2(2)(f) and (d), and that compliance with MA.2(2)(a) was not demonstrated. It determined accordingly that prior approval of these matters was required and went on to refuse prior approval for the development.

Natural light in all habitable rooms

16. The appeal property as it currently stands is in use as a showroom and has extensive glazing on its elevations to South Row and South Fifth Street, the other elevations being windowless. In order to achieve adequate natural light levels in all proposed flats it is proposed to insert new windows all round, which would be operational development, and on the balance of probabilities express planning permission would be required since the works proposed would materially affect the external appearance of the building. Although some use change permitted development rights allow for some operational development, Class MA does not allow for any. The appellant argues nonetheless that the development can be assessed on the basis of the proposed altered facades, without which it could not achieve adequate natural light levels in all proposed flats. They claim this view is supported by case law, the National Planning Practice Guidance (the PPG), the Fee Regulations, and appeal decisions.
17. No explanation is given regarding how the Fee Regulations support that contention, although I am aware that the Regulations do cover a situation where a related application for planning permission is made at the same time and by the same applicant. If that was the point I do not consider that it can be inferred that a planning application that has not been made at all can be taken into account in the prior approval process. The PPG advises that where associated physical development is required to implement the change of use, developers will need to consider whether it constitutes development and ensure they have planning permission of necessary. However, it is not a necessary implication of that guidance that the proposed Class MA development can include works that will require planning permission but do not have it.
18. Prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The only case law cited is *R. (LW Zenith Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 3317 (Admin), in which HHJ Jarman KC held that a grant of prior approval can be lawfully subject to a negative condition. In that case, the satisfaction of a prior approval requirement under Class O, now replaced by Class MA, concerning the provision of adequate natural light depended on the installation of windows which had been granted planning permission in 2019 but had not in fact been installed, though the permission was extant. The Inspector on appeal declined to impose a condition requiring

implementation of the 2019 permission prior to any change of use. She found that no condition could properly be imposed to require completion of the window installation works. The Judge however found that the Inspector should have identified an obvious solution, namely imposing a condition which restricted occupation of the development until certain operational development permitted by the extant but unimplemented grant of planning permission had been carried out.

19. It is suggested that a similar condition could be imposed in this case. However, in that case the planning merits of the proposed windows had already been considered and found acceptable in planning terms by the local planning authority. As the Judge pointed out, had there been no planning permission for the installation of the windows, then the Inspector had no power to consider the merits of such installation on the prior approval application. That is the position here. In my view it would not be reasonable or appropriate to grant prior approval for a change of use subject to any condition that would, in effect, require a further grant of planning permission. I consider accordingly that the proposed fenestration cannot be taken into account in considering whether the change of use should be granted prior approval with regarding the provision of adequate natural light.
20. The appellant has also provided an extract from a planning appeal decision which considered the lack of planning permission for some features shown on a Class O proposal. The Inspector noted that "...the need for operational development which would require planning permission is not listed as a disqualifying factor under Paragraph 0.1 of Class O of the GPDO." The Inspector went on to say "...whilst Paragraph W(2)(b) of Schedule 2, Part 3 of the GPDO requires a plan indicating the site and showing the proposed development, it does not state whether or not any required operational development should be shown." Whatever scheme was before the Inspector, and I have not been provided with the full decision or appeal reference, GDPO Part 3 does require, in respect of Class MA and the natural light provision, a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses. The circumstances here are distinguishable from the limited details I have been provided in the appeal decision extract.
21. Ultimately the Council found that prior approval of the provision of natural light was required, and was refused on the basis that it had not been shown that the existing windows would provide adequate natural light, and that the windows proposed may need to be modified internally in some way, such as the installation of curtains or blinds, to provide satisfactory living conditions in terms of privacy, such that it was not satisfied that the natural light calculations could be relied upon. On this latter point, since prior approval is limited to the matters specified, I consider that wider amenity considerations, such as privacy, lie outside the ambit of the powers exercisable by the decision maker. However, prior approval could not be granted in any case because it has not been shown that the building as it stands could provide adequate natural light to all proposed habitable rooms.

Transport and noise

22. The Council also found that compliance with condition MA.2(2)(a) had not been demonstrated and that insufficient information has been submitted to enable it to establish compliance with condition MA.2(2)(d).
23. Condition MA.2(2)(a) concerns the transport impacts of the development, particularly to ensure safe site access. The Council's concern relates to the provision of a minimum of 7 cycle parking spaces required by local standards. No car parking provision is made, relying on adequate public parking availability, but while cycle parking is considered necessary to reduce reliance on private car use, no specific provision is made. The appellant argues that this is a matter that can be dealt with by the imposition of a condition requiring the submission and approval of details, and has stated that an indicative layout has been prepared showing Sheffield stands at the entrance point in a secure and covered location. That indicative layout has not been provided in support of this appeal, and I agree with the Council that it is not clear how the required secure cycle parking could be provided within the application site. Had I been satisfied that there were no practical impediments to the provision of cycle parking I would have agreed with the appellant that this is a matter that could be conditioned, but it is a constrained site with no private outside space, so it is entirely reasonable, in my view, to require sufficient detail at the application determination stage to be confident that there would be appropriate secure cycle provision before occupation.
24. Condition MA.2(2)(d) concerns the impacts of noise from commercial premises on the intended occupiers of the development. A report dealing with this was submitted with the application, but it relied upon a noise survey undertaken in November 2021 for a previous application. The Council considered this to be effectively out of date, but there was no evidence of any actual change in the vicinity that might have altered the noise environment, and I am satisfied that the 2021 noise survey would have provided a good basis for assessment for the purposes of MA.2(2)(d) when the application was determined in September 2024. It follows that prior approval should have been granted for this matter.

Conclusion

25. Since the proposed change of use cannot demonstrate that adequate natural light can be provided for all habitable rooms, GDPO Schedule 2 Part 3 W(2A) requires that prior approval must be refused. I have found also that the failure to demonstrate adequate cycle parking means compliance with condition MA.2(2)(a) was not demonstrated. There is some discretion attached to the consideration of transport impacts, and had it been critical I would have sought further details regarding the practicality of appropriate cycle provision. However, for the reasons given, the appeal must be dismissed in any case and prior approval refused.

Paul Dignan

INSPECTOR