



Appeal Decision

Site visit made on 13 May 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th June 2024

Appeal Ref: APP/E5900/W/23/3334717

126 Commercial Road, London E1 1NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Mazoor Ahmed against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref is PA/23/01678.
 - The development proposed is described as a change of use from Commercial Class E to Residential Class C3.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. 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") provides for a permitted development right for the change of use of a building falling within use class E (Commercial, Business and Service) to class C3 (Dwellinghouses). This is subject to limitations and conditions, as set out in subsequent paragraphs of Class MA.
3. The appeal site comprises a 1st floor office which was vacant at the time of my site visit. Prior approval was refused by the Council on the grounds that the proposal failed to demonstrate the building had been vacant for a minimum of 3 months immediately prior to the date of the application for prior approval as required by Paragraph MA.1.(1)(a) of the GPDO.
4. Paragraph MA.2.(2) of the GPDO requires that: Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required. In this case, the matters in dispute between the main parties are transport impacts of the development and the provision of adequate natural light.
5. Against this background the main issues are:
 - whether the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO;
 - if so, whether prior approval should be granted in respect of the transport impacts of the development, with particular regard to cycle parking and servicing; and

- whether prior approval should be granted in respect of the provision of adequate natural light.

Reasons

Whether the proposal would be permitted development

6. Under paragraph MA.1., development is not permitted by Class MA unless various criteria are met. Apart from paragraph MA.1.(1)(a), it is not disputed that all of the other criteria in MA.1 would be met by the proposed development, and I have no basis to consider differently.
7. Paragraph MA.1.(1)(a) states that unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval, development is not permitted. In this case, the date of application was the 6 September 2023.
8. The original application was supported by a tenancy termination notice from E1 Solicitors, dated 7 September 2021, informing the landlord of their intention to vacate the premises on the 30 September 2021. However, it was not clear, at that stage, if the appeal site had sat vacant during the 3 months immediately prior to 6 September 2023. The application for prior approval was refused on the 30 October 2023 on this basis, amongst other things.
9. During November 2023, the applicant arranged for a Council Business Rates Inspector to visit the property to confirm the unit had been vacant. On 24 November 2023, the Business Rates Inspector confirmed that the appellant's submitted evidence was sufficient to show that the first floor had been empty and void since 30/09/2021. The findings of the Business Rates Inspector and further electricity bills have been submitted with this appeal showing no electricity had been used for the majority of the 3-month period immediately prior to 6 September 2023.
10. Based on the evidence before me I am satisfied that the appeal building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. I find that the requirements of MA.1.(1)(a) are met and the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO, subject to the relevant conditions which I shall now come onto.

Transport impacts

11. The appellant has submitted an Outline Waste Collection & Bike Storage document as part of their appeal submissions. The document relies considerably on the use of rear access from Ropewalk Gardens. However, this rear access lies outside the red line boundary shown on the site location plan.
12. Given this area falls outside the red line boundary, there is no certainty that the proposed cycle and servicing areas could be relied upon. For these reasons, I conclude that the proposal would not provide adequate cycle parking and servicing and would not accord with condition MA.2.(2)(a) of Schedule 2, Part 3, Class MA of the GPDO.

Adequate natural light

13. Condition MA.2.(2)(f) of Class MA requires the provision of adequate natural light in all habitable rooms. The proposed development would be an open plan

studio flat. An updated Internal Daylight Assessment (“the IDA”) was submitted with the appeal.

14. The IDA’s findings indicate that the proposed development achieves compliance with the internal daylight requirements set out in the British Standard “Daylight in Buildings” 2018 (“the BSDB”). Reference is also made to the BRE Site Layout Planning for Daylight and Sunlight, A guide to good practice, 2022 (the BRE Guide).
15. I note that the floorplate is deep and existing windows which serve the proposed development are sited to two elevations given its ‘mid-terrace’ siting. I also note that the middle area of the proposed development would receive the least light. However, as an open plan studio one bedroom flat, the IDA shows that daylight levels would comply with both the BRE Guide and the BSDB targets.
16. For the above reasons, I conclude that the proposed development would provide adequate natural light and would accord with condition MA.2.(2)(f) of Schedule 2, Part 3, Class MA of the GPDO.

Conclusion

17. The proposed development would fall within the provisions of Schedule 2, Part 3, Class MA of the GPDO and would provide adequate natural light in accordance with MA.2.(2)(f). However, it has not been demonstrated that it would provide appropriate cycle parking and servicing in accordance with MA.2.(2)(a). As such the proposal would not be permitted development.
18. For the reasons given above, I conclude that the appeal should be dismissed.

N Praine

INSPECTOR