



Appeal Decision

Site visit made on 8 September 2025

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2025

Appeal Ref: APP/N5660/W/24/3355316

1A Curnick's Lane, Lambeth, London, SE27 0UT

- 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 HGS Properties (Curnicks Rd Norwood) Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 24/00729/P3MA.
 - The development proposed is change of use of the existing building (Use Class E) to 5 residential units (Use Class C3) and associated waste and cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024, after the determination of the application and the submission of this appeal. I am satisfied however that the appeal's timeline allowed sufficient scope for the main parties' submissions to reflect the updated Framework. In determining the appeal accordingly, references to paragraph numbers from the Framework refer to the current December 2024 iteration.
3. The appeal was made against the Council's 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) (hereafter, the Order). When determining an application of this nature, the provisions of paragraph W.(10)(b) require regard to be had to the Framework so far as relevant to the subject matter of the prior approval required, as if the application were a planning application. There is no similar requirement expressly set out within the Order for regard to be had to the provisions of the development plan, but development plan policies may be relevant only where they relate to the matters for which prior approval is sought, and only as evidence to support the particular planning judgement to be made.
4. The applicant as initially set out on the application form was stated as being 'C/O Agent'. The agent has subsequently confirmed that the applicant should instead be 'HGS Properties (Curnicks Rd Norwood) Ltd', as set out in the banner heading, above. I have determined the appeal accordingly.
5. A signed and dated Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the Act) has been submitted with the appeal. The UU makes provision for the 'owner'¹ to covenant with the Council matters related to access improvements, disabled person's car parking and

¹ As referred to in the UU

electric vehicle charging point provision, car club membership, cycle hire scheme, restriction of access to residential parking permits by way of the payment of related financial contributions. I will return to this matter separately, below.

Background and Main Issues

6. Class MA of the Order permits development consisting of the change of use of a building and any land within its curtilage from a use falling within Class E² of Schedule 2 to the Use Classes Order³ (UCO) to a use falling within Class C3⁴ of Schedule 1 to the UCO. Paragraphs MA.1(1) and (2) set out a range of exclusions and circumstances in which development is not permitted under Class MA, including the relevant use classes prior to revisions to the categorisation of uses within the UCO.
7. Of these, and pertinent to the matter before me, paragraph MA.1.(1)(b) requires that the use of the building fell within one of the use classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. In instances on or after 1 September 2020, this means uses falling within Class E of Schedule 2 of the UCO.
8. Paragraph MA.2. of the Order goes on to set out the conditions under which permission under Class MA is granted. Sub-paragraph (2) requires submission of an application for a determination as to whether the prior approval of the local planning authority will be required for, inter alia, transport impacts of the development, particularly to ensure safe site access; impacts of noise from commercial premises on the intended occupiers of the development and the provision of adequate light in all habitable rooms of the dwellinghouses.
9. The Planning Practice Guidance (the Guidance) states that permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity. This is effectively a 2-stage process where it is necessary in the first instance to determine whether or not the proposal is permitted development.
10. Therefore, the main issues are:
 - Whether or not the proposed development would constitute permitted development as defined by Class MA of the Order; and, if so,
 - The effects of the proposed development with regard to the prior approval matters specified in paragraph MA.2(2), with particular regard to the provision of adequate natural light in all habitable rooms of the dwellinghouses; the transport impacts of the development, with particular regard to ensuring safe site access; and the impacts of noise from commercial premises on the intended occupiers of the development

² Class E (commercial, business and service)

³ The Town and Country Planning (Use Classes) Order 1987 as by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

⁴ Class C3 (dwellinghouses)

Reasons

11. The parties do not wholly agree as to the site's planning history or the nature of the previous uses to which the building and land has been put. I am not required under the provisions of an appeal under section 78 of the Act to determine the lawful use of a building and, should the appellant wish to establish this, an application can be made to the Council for a Lawful Development Certificate (LDC) with the relevant evidence required to support that position.
12. The appeal property is a broadly L-shaped building largely comprised of a main two-storey building with stepped levels that runs the entire depth of the site from its Curnicks Lane site frontage to the rear. At 90° to this building is a flat roofed, single storey building that runs the width of the site's rear boundary. Directly adjoining this part of the building and the current appeal site boundary, but outwith the appeal site, is a further two storey building. This building was subject to previous LDC applications⁵ in respect of an existing lawful use, along with the parts of the building the subject of the current appeal. At the time of my visit to the site I saw that direct internal access from the single storey building into the adjoining building was possible.
13. The appeal property, along with the adjoining building, have been split into three 'areas' by the appellant for the purposes of describing the previous uses of the buildings within the site. Of these, 'area 1' lies beyond the current appeal site boundaries even though access to, and between, it and those parts within the appeal site was possible at the time of my visit to the site. Moreover, there is broad agreement between the parties that 'area 1' was occupied and used as part and parcel of previous operations and uses within the appeal site.
14. Nevertheless, there is agreement between the parties that "Express Radiators" occupied all three of the 'areas' shown on the plan extract⁶ across a period extending from approximately 1982 to 2015, and by "Family Classics" from 2015 to 2016. Within this period, parts of the building were also occupied for shorter periods of time by companies called "I Cleenz Macheenz" ('area 1') and "BSA Waring" ('area 3').
15. Both parties rely on conclusions reached in relation to the 2020 and 2021 LDC applications regarding the past uses of the site. Thus, the appellant seeks to use the Council's conclusions with regard to a 2020 LDC application that it was considered 'probable' that the operations of "Express Radiators" had been subject to steps and mitigation to render its operations what might have been considered to be a 'light industrial use'. However, the Council subsequently clarified in the form of both the later 2021 LDC application and the current appeal submissions, that during the course of the 2021 LDC further evidence came to light to suggest that it could not be concluded on the balance of probabilities that 'Express Radiators' operated as a Use Class B1(c) use.
16. Neither party have produced the range and depth of evidence in relation to previous applications that each refer to in the current instance now before me. Rather, the submissions now before me include selected extracts and paraphrased sections of documentation and evidence from those schemes. There seems to me therefore to be continuing doubt as to the extent to which "Express Radiators"

⁵ LPA Ref Nos: 20/03846/LDCE (the 2020 LDC) and 21/00602/LDCE (the 2021 LDC)

⁶ Figure 1 – Appellant's Full Statement of Case

operations and, to a similar extent, those of “Family Classics”, could be classed as a Use Class B1(c) operation rather than a Use Class B2 operation. This distinction is crucial, as the current Use Class E does not incorporate Use Class B2 uses and in such circumstances the appeal scheme would not benefit from the provisions of Class MA.

17. It is noted that ‘area 1’ was removed from the scope of the appeal site as a consequence of uncertainty regarding the exact nature of “I Cleenz Machineez’s” operations in the context of an application for prior approval under Class MA. The inter-related nature of the relationship of the three areas to each other, particularly the contiguous access between areas 1 and 2, lead me to doubt from the evidence before me the extent that the Use Class B2 nature of “I Cleenz Machineez’s” operations were limited just to ‘area 1’ given the nature of the operations of “Express Radiators” and “Family Classics”.
18. Similarly, whilst an office use of ‘area 3’ could have previously fallen within Use Class B1(a), there remains doubt as to the nature of the “BSA Waring” occupation and use of this area and whether it was instead associated with the operations and uses elsewhere within the building. Even if I were to conclude that the use of this small part of the building was in some way a separate and standalone office use, which I consider unlikely given the manner of access to it through areas occupied and used in connection with the rest of the building, the building to which this matter relates was not used solely for a use falling within Use Class E (or the previous use categories specified by paragraph MA.1(2)).
19. Based upon the evidence before me, I am not persuaded that it has been adequately demonstrated that the building in question meets the requirements of, or benefits from, the provisions of Class MA of the Order. Specifically, it has not been adequately demonstrated that the use of the building fell within one or more of the classes specified in sub-paragraph MA.1(2)(a) as they applied prior to 1 September 2020, and thus within Use Class E as it currently exists. It does not fall to me within the scope of this appeal to formally determine the lawful use of the building to which this appeal relates. If the appellant wishes to establish this, they may apply to the Council for a Lawful Development Certificate and submit the relevant evidence to support their claim and have the matter formally determined as such.
20. Having regard to the above, it is not necessary for me to consider whether or not prior approval should be required and granted having regard to the impacts of the matters set out at paragraph MA.2(2)(a), (d) or (f), and the provisions of the submitted UU, as these matters would not alter the outcome of the appeal.

Conclusion

21. For the reasons set out, the appeal should be dismissed.

G Robbie

INSPECTOR