



Appeal Decision

Site visit made on 18 September 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Appeal Ref: APP/Z5060/W/23/3320273

93-99 New Road, Dagenham RM10 9NL

- 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 Cloister Properties Plc against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 23/00047/PRIMA, dated 9 January 2023, was refused by notice dated 10 February 2023.
 - The development proposed is change of use of the ground floor from commercial to 4 1xbed flats (Class C3).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Cloister Properties Plc against the Council of the London Borough of Barking and Dagenham. This application is the subject of a separate decision.

Background and Main Issue

3. Class MA of the General Permitted Development Order (GPDO) permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses). The Council is satisfied that the development complies with the requirements set out in Paragraph MA.1 of Class MA, and there is no evidence before me that would lead me to reach a different view on this.
4. Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the matters set out in paragraphs MA.2(2). This includes MA.2(2)(f), which relates to the provision of adequate natural light in all habitable rooms. It is this matter which is referred to in the Council's reason for refusal.
5. However, whilst not raised as a reason for refusal by the Council, the proposal includes the installation of new windows and doors, which amount to building operations. Class MA does not permit building operations to facilitate the change of use. Both the Council and the appellant have had an opportunity to comment on this matter and both agree that the new and altered openings are not permitted by Class MA. However, the appellant has requested that the appeal proceeds in order to provide certainty on other matters.

6. Accordingly, the main issue is whether the development would accord with the conditions of Schedule 2, Part 3, Class MA of the GPDO, with regard to the provision of adequate natural light in all habitable rooms.

Reasons

7. The term 'habitable rooms' is defined in Part 3, paragraph X of the GPDO as meaning '*any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms*'.
8. Having regard to the existing floor plans and elevation drawings submitted, and my site visit observations, it is evident that there are insufficient existing windows in the building to ensure the provision of adequate natural light to all proposed habitable rooms. Whilst alterations to existing windows and doors and the installation of new windows and doors are proposed, such operations are not permitted under Class MA.
9. I am advised that if prior approval was granted, a separate planning application would be submitted for the necessary building operations. However, I do not consider it would be reasonable to grant prior approval subject to a condition requiring operational works to first be undertaken in accordance with a separate planning permission, regardless of whether such a planning permission has already been granted or not. To do so would undermine the purpose of the GPDO, which grants permission for changes of use that comply with the specified requirements and conditions set out within it.
10. The proposal relates to the ground floor of a three-storey building. There are buildings of similar and greater height, which project well beyond the rear elevation of the appeal property. There are also outbuildings, containers and a sub-station to the rear of the site, as well as a car park. All of these factors are capable of affecting the light to the rear of the building.
11. The north point shown on the submitted drawings is incorrect. As such, had I been able to consider the proposed windows, each of the four flats proposed would have a south facing bedroom window to the front and two north facing living room windows to the rear. The front windows would provide adequate natural light to the proposed bedrooms. Whilst I accept that future occupiers would be likely to introduce some form of privacy screening to these windows, there are methods of doing so that would not unacceptably reduce the natural light experienced within these rooms. Such methods would be highly unlikely to constitute development and would not be a matter for consideration as part of the planning process.
12. The proposed living rooms to the rear of the building would each have two north facing windows. However, the kitchen dining areas, which are not designed solely for cooking, would be set some way back from these. The rear windows to Flat 4 in particular would be set back in an enclosed corner and there is currently a storage container and outbuilding sited close to where these would be. The rear windows to Flat 1 would be obscured by the sub-station, and at the time of my visit vehicles were parked outside of where the rear windows to Flats 2 and 3 would be located.
13. The proposal is supported by a Sunlight and Daylight Assessment. However, the plans appended to this report have a different internal layout to those

proposed. Moreover, the report makes no reference to the various obstructions, such as the sub-station, storage container and other paraphernalia, which currently obstruct the rear of the building. Nor is any reference made to the vehicles that could be parked outside of the proposed rear windows, potentially blocking light to them. It is therefore unclear whether any regard has been had to these obstructions and uses of land, or whether their removal is within the appellant's control.

14. The report does not appear to assess all habitable rooms shown on the proposed plans. In particular, the proposed dining areas, which are all set back some distance from the north facing and partially obstructed proposed window positions, are not referred to. The report does however confirm that the proposed bedroom windows to Flat 4, which would be the living room windows on the revised plans, would not receive adequate light.
15. It is suggested this would be outweighed by the benefits of the proposal, however as this is not a full planning application there is no balancing exercise. To benefit from deemed consent under the GPDO all of the requirements and conditions must be met.
16. As the windows necessary to provide adequate natural light in all habitable rooms of the proposed dwellinghouses do not exist and cannot be secured through the prior approval process, the development would not accord with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA. Even if the windows did exist in the positions shown, I am not convinced that all habitable rooms would be provided with adequate natural light.

Conclusion

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

R Bartlett

INSPECTOR