



Appeal Decision

Site visit made on 4 February 2025

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2025

Appeal Ref: APP/W1715/W/24/3355089

10-12 Botley Road, Hedge End, Hampshire SO30 2HE

- 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 Mr B Prebble against the decision of Eastleigh Borough Council.
 - The application Ref is PN/24/97070.
 - The development proposed is change of use (or, more accurately: return to original use) from office, to 3No. houses.
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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 a permitted development right for the change of use of a building falling within Use Class E (Commercial, Business and Service) to Use Class C3 (Dwellinghouses).
3. Paragraphs MA.1. (1) and (2) set out the restrictions and conditions to qualify for permitted development under Class MA. These include that the use of the building fell within Use Class E for a continuous period of at least two years prior to the date of the application.
4. Whilst the plans indicate that the building is being used as offices, the planning history for the site, and what I saw when I visited the site, indicate that the last use of the ground floor of the appeal building was as a car dealership. Furthermore, it is evident from the appeal details that the first floor of the building is being used for residential purposes. In light of the principles of natural justice, the parties have been provided with an opportunity to comment on this.
5. The Council has subsequently submitted that the use of the building is not within Use Class E. The Council has therefore in effect indicated that the development falls outside Class MA, in addition to the reason for refusal on its decision notice. As such, I have had regard to the additional issue in my determination of the appeal. Given that the main parties have had the opportunity to comment on this matter, neither would be prejudiced by me doing so.

6. Having regard to the above, 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; and
- if so, whether prior approval should be granted in respect of the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

7. The appeal site comprises a two storey detached building (10-12 Botley Road) that is situated on the edge of an industrial estate. Adjacent to the site is a building that is in commercial use on the ground floor with residential accommodation above. On the opposite side of an access leading to the industrial units behind the appeal site is an enclosed area that appears to have been used to sell cars in association with the car dealership that was operating from the appeal site. The forecourt in front of the building has been used to sell cars.
8. The planning history shows that permission was granted in 1981 for the change of use of 10 Botley Road to an office/showroom¹ and permission was granted in 2003 for the change of use of 12 Botley Road from offices to a taxi office². Contrary to the submitted plans, the evidence indicates that the ground floor has been occupied by a car dealership for a significant period of time and that the first floor has been used as residential accommodation for over 10 years.
9. The appellant has explained that the ground floor has only been used as office space for the car dealership's accounts team and not used for direct car sales, and that no cars have been displayed in the building itself. It is also confirmed that an element of the first floor was used for storage and filing.
10. Article 3(6) of the Town and Country Planning (Use Classes) Order 1987 (as amended) lists uses that do not fall into the use classes and therefore are *sui generis*. Included in the list of uses is the sale or display for sale of motor vehicles. The use is not limited to the display of motor vehicles but includes the sale of vehicles. As such, cars not being displayed in the building does not in itself demonstrate that the ground floor is anything other than *sui generis*.
11. I acknowledge that the appellant has confirmed that direct car sales did not take place from within the building, but it is not clear how the selling of cars on the forecourt of the site functioned, given that the main site for the dealership is in Fareham. It has not been sufficiently demonstrated that the ground floor had no association with the sale of motor vehicles. I cannot therefore be confident that the sale of cars on site had no relationship with the function of the ground floor. Without this certainty I cannot conclude that the last use of the ground floor was anything other than *sui generis*.
12. Whilst its lawfulness appears uncertain, the residential use of the first floor does not fall within Class E. Even if I was to proceed on the basis that the lawful use of the first floor was offices, this would make no difference to my findings above. The use of the building would not fall within Class E or therefore benefit from Class MA.

¹ Planning application reference Z/19077/3

² Planning application reference Z/39738

13. On the basis of the evidence before me I therefore find that the building has not been used continuously for a period of two years as an E use, contrary to MA.1.
14. It has not been demonstrated that the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO. Consequently, the proposal is not permitted development.
15. The Council also has concerns regarding the effect of noise from the nearby commercial units on the intended occupiers of the development, and MA.2.(1) of the GPDO makes clear that prior approval of the determining authority will be required as to a number of criteria, including impacts of noise from commercial premises on the intended occupiers of the development. However, as I have found that the proposed development is not permitted development under Class MA, it is unnecessary to consider the matter further.

Other Matter

16. Some potential scheme benefits are claimed, including the contribution that the proposal would make to the local housing supply. However, as the considerations for the appeal are limited to the conditions, limitations and restrictions specified under Schedule 2, Part 3, Class MA of the GPDO, I cannot take these claimed benefits into account.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

K Reeves

INSPECTOR