



Appeal Decision

Site visit made on 21 January 2026

by **Andreea Spataru BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 February 2026

Appeal Ref: 6001572

37 Bradford Road / 2 & 4 King Street, Cleckheaton BD19 3JN

- 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 Clifton Properties against the decision of Kirklees Council.
 - The application Ref is 2025/90833.
 - The development proposed is described as 'conversion of existing commercial premises into 9 self contained flats in Cleckheaton town centre (the total of nine includes one existing flat the access to which is to be altered).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted, at the appeal stage, additional evidence comprising an amended internal layout plan, a Natural Lighting Assessment (NLA), and a Transport Statement (TS). I am mindful that the appeal process should not be used to evolve a scheme in order to address the Council's reasons for refusal. While proposals can, in limited circumstances, be amended during an appeal in accordance with the Wheatcroft principles, I consider there to be substantial differences between the submitted appeal scheme and the revised version. Moreover, the changes to the internal layout alter the overall number of flats, meaning the amended scheme no longer reflects the original description of development. In the interests of fairness and accuracy, I have determined the appeal on the basis of the plans and evidence originally before the Council, and upon which public consultation has been carried out.

Background and Main Issues

3. 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.
4. Paragraph MA.1. (1) and (2) set out the requirements to qualify for permitted development under Class MA. The Planning Officer's report states that the appellant has not provided substantive evidence to demonstrate that the building has been vacant for a continuous period of at least three months prior to the date of the application. However, this requirement was omitted from the latest version of the GPDO. There is no dispute between the main parties with regard to the

relevant criteria of Class MA.1. Based on the evidence before me, I agree that the criteria of Class MA.1 are satisfied.

5. Paragraph MA.2 (2) requires that where any development under Class MA is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for its prior approval subject to a number of matters. In this case, the matters in dispute between the main parties are (a) the transport impacts of the development, (b) the contamination risks in relation to the building, and (f) the provision of adequate natural light in all habitable rooms.
6. In light of the above, the main issues are whether the development would accord with the conditions of Schedule 2, Part 3, Class MA of the GPDO with regard to the transport impacts of the development, particularly to ensure safe site access, the contamination risks in relation to the building, and the provision of natural light in all habitable rooms.

Reasons

Transport impacts of the development

7. The application form states that the proposal would give rise to no transport impacts. However, no substantive evidence has been submitted to support this assertion.
8. The appeal site lies within a town centre location with access to public transport. The submitted plans show that the appeal site boundary extends beyond the footprint of the building to include part of King Street and land immediately to the north, adjoining the neighbouring car wash/garage. Based on my site visit observations, the land to the north appears to function as an access track leading from Bradford Road to a gated area situated to the rear of the appeal building. King Street also leads from Bradford Road to a gated area to the rear of the appeal site.
9. The limited information provided at the application stage includes no details regarding refuse storage and collection arrangements, cycle parking provision, or whether any off-street parking facilities would be available. In the absence of substantive information demonstrating how the development would be accessed and serviced, I am unable to conclude that the scheme would operate safely or that its overall transport effects would be acceptable.
10. The proposal therefore fails to meet the requirements of paragraph MA.2 (2) (a) under Class MA of the GPDO.

Contamination risks of the building

11. The procedure for applications for prior approval under Part 3 is set out in paragraph W of the GPDO. Paragraph (10) (c) sets out the requirement to determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990, with regard to the Contaminated Land Statutory Guidance¹, and to refuse prior approval if the site will be contaminated land.

¹ Environmental Protection Act 1990: Part 2A (Contaminated Land Statutory Guidance), DEFRA (April 2012)

12. The Council indicates that the appeal site is within a Mining Remediation Authority Development High Risk Area, and a Class 2 Radon Gas area. Consequently, due to its location and former industrial use, the Council found the appeal site to be within a potentially contaminated land designation. The appellant does not dispute the former industrial use of the site.
13. Notwithstanding the above, there is very limited information before me with regard to how the site has been previously used, and whether there could have been chemicals or materials used in works over the years that could have resulted in contamination. I have not been provided with a contaminated land assessment to confirm there would be no contamination risks associated with the residential use of the building.
14. Whilst there is scope within the GPDO to attach planning conditions reasonably related to contamination, there is no substantive evidence of the extent of any contamination, what mitigation would be required, or if it is achievable in this location. Based on the information before me, a conditional approach would not be appropriate taking into account risks to human health. As such, there is insufficient evidence to convince me that the site will not qualify as contaminated land either with or without remediation under Part 2A in relation to the intended use of the building.
15. For the above reason, I conclude that the proposed development would not meet the requirements of MA.2. (2) (b) under Class MA of the GPDO.

Provision of natural light in all habitable rooms

16. The appeal building has a 3 storey building in its proximity to the south, and a 1.5 storey building to its north. The plans show that all habitable rooms of the proposed flats would be served by windows.
17. Due to a combination of the proposed layout, proximity to neighbouring buildings, and orientation, it is not clear that adequate natural light could be achieved for all habitable rooms. This particularly concerns flat 2 (ground floor), flat 7 (first floor), and flat 3 (ground floor) as they would be located towards the rear of the appeal building, opposite the 3 storey neighbouring building (flats 2 and 7), and opposite the 1.5 storey adjoining building (flat 3).
18. In the absence of substantive evidence, such as a Natural Lighting Assessment for the appeal scheme, I conclude that it has not been demonstrated that the proposed development would provide adequate natural light in all habitable rooms of the proposed flats and the proposed development would, therefore, not meet the requirements of MA.2. (2) (f) under Class MA of the GPDO.

Conclusion

19. For the reasons given above the appeal should be dismissed.

Andreea Spataru

INSPECTOR