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How to Make a 30% Profit on GDV Just Through PD Rights



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Local planning authorities are not great fans of permitted development and prior approval, especially of the new Class MA permitted development rights, which make it easier for developers to convert redundant shop and office space to much-needed new apartments in town centres and High Street locations.

In a recent case, in the London Borough of Richmond-upon-Thames (RoT/ the Council), we helped a client to get prior approval through in a ‘race against time’ before an imminent new Article 4 Direction came into force, which would have meant that a full planning permission would have been needed.

The case proved to be more difficult than it might appear on the face of it, but in the end will return about 30% profit on the gross development value (GDV) of the project - just through using the new PD rights.

Diamond in the rough

The property concerned comprises a shop in Richmond Road, London. The shop was very deep and, like many small business retailers in the High Street, could be used much more efficiently, without the need for quite so much space to the rear:

The effect of the pandemic in accelerating demand for online shopping, lowering footfall to some High Street locations and adding cost pressures on businesses, has pushed these premises on to the market. There it remained while several sales fell through, until our clients took the plunge.

Before committing to the deal, they sought our advice in January 2022 as the council was looking to bring in an Article 4 Direction at the end of July 2022 to withdraw PD rights under Class MA to turn such premises into apartments.

The rear of the shop had a deep but narrow floor plate but opened on to a rear yard, with potential for a small garden



or landscaped courtyard, and access for bins and bicycles. The property is in a conservation area, controlled parking zone (CPZ), secondary shopping frontage and flood zones 2 and 3.

Setting a timetable

It is important to understand as soon as possible whether any other applications need to be made before submitting the application for prior approval, such as for new windows and roof lights to bring in enough natural light. If so, then a sunlight and daylight consultant should be brought on board as soon as possible.

The rear of the property had the potential for excellent natural light, but a large, redundant storage container would need to be removed and new roof lights approved (under full planning permission) before we could proceed with an application for prior approval.

This meant that we had to sit down with the client early on, and plot a timetable to ensure that we remained on target throughout, allowing for any slippage or

delay in preparing plans or reports, or in the Council determining the application for full planning permission:

Knowing that we would have to go in for an application for permission, we therefore needed to allow a minimum of 20 weeks from when plans were first instructed, and we were first engaged through to the final date when prior approval needed to be confirmed before the Article 4 Direction came in to force.

Stage of Planning	Time allowed	Date
Measured survey and initial plans	4 weeks	07.02.2022
Last date to submit application for full planning	8 weeks	08.04.2022
Last date to submit Class MA application	8 weeks	03.06.2022
Article 4 Direction comes into force		31.07.2022

Prior approval must be obtained before an Article 4 direction comes into force. It is not sufficient merely to submit the

application before the date it comes into force, as consent must be obtained by this date; GPDO 2015, Article 4(2)(a). The same applies if the application is refused but the Direction has not yet come into force, but this refusal is appealed and the Planning Inspectorate have to determine the appeal after the Direction is in force, as the Inspector will be bound by the Direction then and will have to dismiss the appeal, even though the Direction may not have been in force when the Council took its decision, or even when the appeal was made.

Professional reports and extra time

Although 20 weeks can be enough in nearly all cases where this strategy is adopted, we needed more time than this to collate all the necessary reports.

The sunlight and daylight report was the most critical and the first application, for the window changes and new roof lights, was submitted six weeks after the start, on 21 February.

Furthermore, as this site was in a Flood Zone 2 and 3, a flood risk assessment was required (FRA). The FRA required the raising of internal floor levels in order to mitigate against flood risk at a ground floor level (which would form part of the prior approval application, not the applications for full planning permission).

The FRA report did not come back until 8 April, which was the last date for submission of the application for planning permission. When we got the sunlight and daylight report back (which was more critical for the first planning application), we decided to submit the application then and not wait for the FRA to come in, as we wanted to try and build up some extra time, in case there was any delay in the consideration of the applications before the Article 4 Direction comes into force. Staying on track and not running over the agreed 'long stop' dates for each stage was critical for this strategy to work.

Variation of first application

The results of the FRA necessitated a few minor changes to the height of the step from the rear glazed doors from the lounge out into the rear garden and so we also proposed a new raised timber deck with steps down to the rear garden as a result and side privacy screen.

These changes were not critical to the tests for the Class MA prior approval application and so we prepared to submit

the Class MA application before this new application had been determined.

Back to square one?

Whilst dealing with this application, we had shown on the elevations and plans for the proposed layout an outline of the changes that had already been approved to the existing building (new windows and roof lights, and removal of the rear storage container), as well as an outline of pending changes in the recent variation application for the timber decking. This was clearly marked on the plans as matters that we were not seeking prior approval on - Class MA rights are only available on internal changes. We also reiterated this in our Planning Statement.

Work was also started in the meantime on the implementation of these external changes, which had received a full grant of planning permission in the meantime, by removing the rear storage container. The reason for this was to give weight to our intention to undertake the window and roof light changes on which we were relying

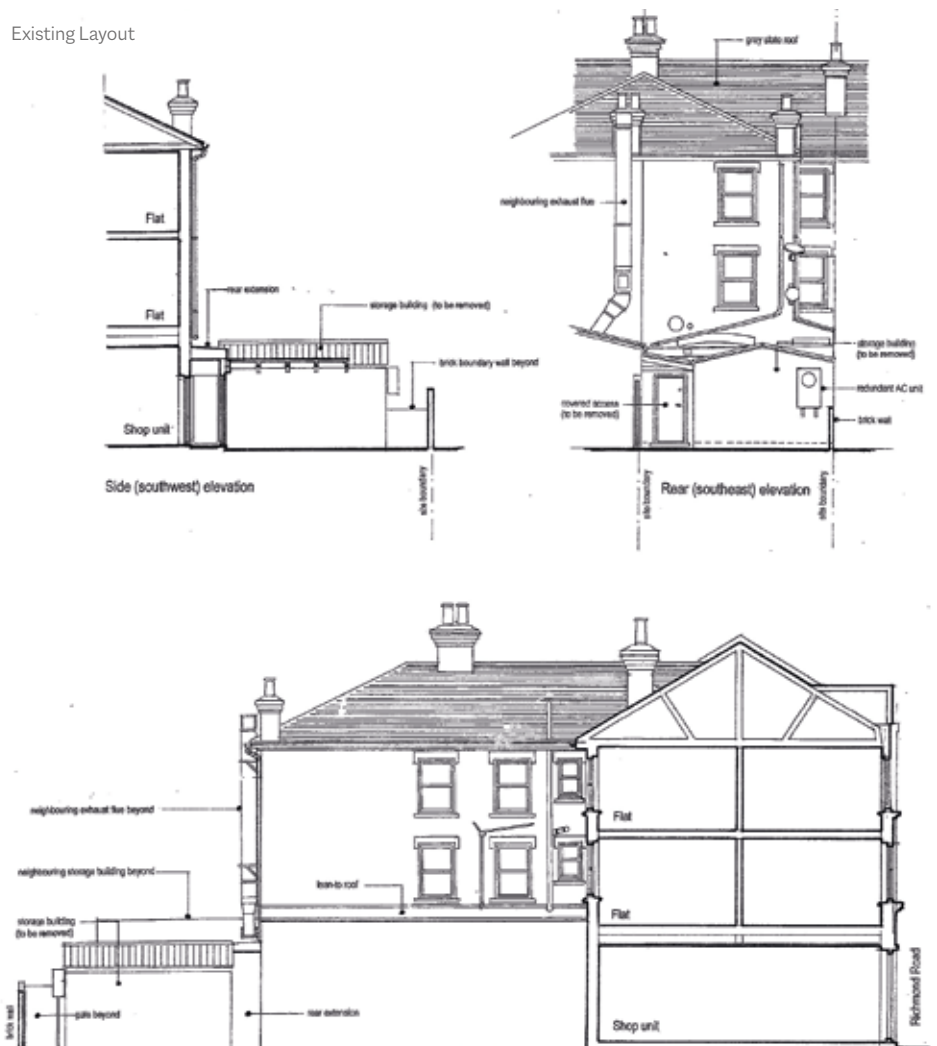
to make the case to the Council that the new apartment would benefit from good natural light.

However, we were contacted by the case officer on 21 June, about six weeks into the Class MA application that they were concerned on two fronts:

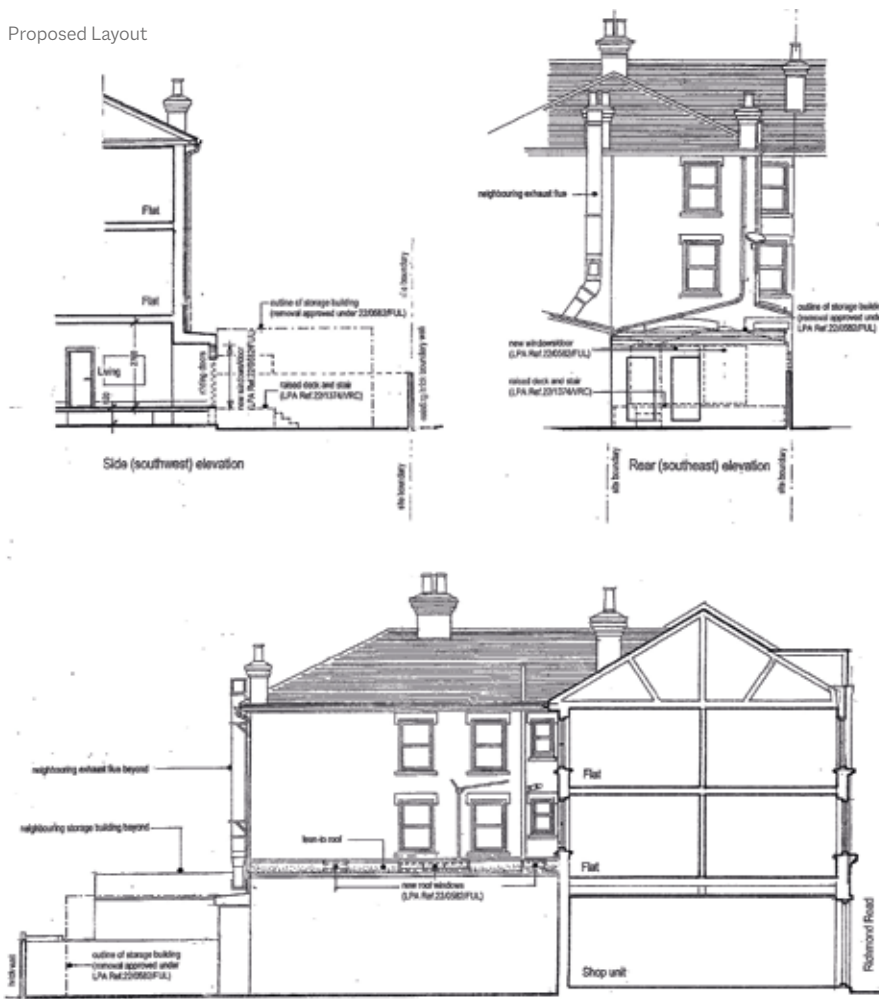
1. The removal of the storage container meant that the 'existing plans' shown on the application drawings were no longer accurate, as they showed this container as being present on the site (indeed, the plans were accurate at the time the application was submitted).
2. The indication of other changes that are external to the building and noted in other applications, even though these were 'indicative' only, meant that the plans fell outside the scope of Class MA and we would have to withdraw the application and resubmit without these features shown on the plans.

The second point contradicted the way in which we had presented similar successful applications to other local authorities, and we were concerned that this approach ▶

Existing Layout



Proposed Layout



would directly benefit the Council and block the prior approval completely with the Article 4 direction coming into force soon.

Having to withdraw or resubmit any new Class MA application at this stage, with barely five weeks remaining until the Article 4 Direction comes into force, would have meant instant refusal - not only of the current application, but that any new application, even if submitted before the date on which the Direction comes into force, would be doomed to failure, as well as a planning appeal (see above and Article 4(2) of the GPDO 2015). Therefore, we had no choice but to engage a specialist planning barrister, a QC, to go back to the council with a robust defence of our position.

A delicate balance

The application now faced a tense period. Officers would have easily been able to defend their refusal on appeal, as an Inspector could have simply dismissed an appeal with regard to the Article 4 Direction. Therefore, in seeking to state our case and save the prior approval, we had to be as robust as possible.

However, if you are too aggressive with officers, you can push them toward a refusal, but too gentle and it will lack the force and focus needed to persuade officers to review their approach.

Therefore, knowing how to pitch any legal opinion from a barrister that is sent to officers, essentially, claiming that they are wrong needs to be put at the right level - a balance between 'seeking to assist' in the interests of getting 'the right' decision, but

also indicating a seriousness of purpose that lets officers know that we might be prepared to challenge a decision if we need to do so.

Thankfully, officers responded positively and constructively to the legal Opinion and suggested a substitution of plans for a 'clean' version, which did not change the essence of the prior approval proposals but did omit reference to external changes obtained under previous consents.

The approach finally taken in respect of the drawings was not, in our opinion, the correct legal approach (on the advice that we had obtained from a Planning QC last year), but it was a useful and quick compromise and led to the timely approval of consent under Class MA.

Conclusion

Overall, from our instruction through to the grant of prior approval, the total time taken was 23 weeks, including instructing consultants, undertaking revisions to plans, obtaining planning permission for external changes and varying this, and obtaining prior approval for change of use.

Therefore, when looking at opportunities for Class MA conversion, you need to allow for this time, especially if there is also the need to obtain consent for external changes first, as part of the strategy.

In this case, it proved to be a relatively speedy and more certain way to achieve a good return, of 30% on GDV, with little exposure to planning risk. However, it is not a straightforward strategy and there are potential 'bear traps' along the way, so it is important to work with an experienced and solid professional team as early as possible.

My thanks to our clients, Lal de Silva and Sean Harrison, of Fusion408 Limited throughout this project.

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