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Optimising Development Under Class MA

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Permitted development rights under Class MA came into force from 21 April 2021 (SI 2021 No.428). In the time since then, local planning authorities have been adapting to the changes to permitted development rights and seeking to understand and apply their limitations whilst trying to manage severe pressures on time and resources.

Alongside this, in a highly competitive climate for convertible stock, with soaring build costs, developers are under pressure to find as much value as possible from conversion and development schemes.

These two factors require a considered and strategic approach to these applications to manage risk and time, as well as enhance the prospect of consent for the optimum number of units, in the least possible time.

All references to Class MA in this article are to the Town and Country Planning (General Permitted Development) Order 2015 as of 7 March 2022.

The application 'clock'

Council officers generally have to try to process applications and determine them within certain set time periods, such as 8 weeks for most applications up to 1,000sqm or 10 units, or 13 weeks for larger applications. This can be extended by agreement with applicants.

If a Class MA application is submitted, then the developer obtains deemed approval by law after 56 days (8 weeks) if the Council has not determined it in time. This means that if officers are struggling to review a case promptly in this time, and issues arise such as a lack of information in the application or minor changes to the plans or clarifications needed, then some Council officers would rather issue a refusal then let the matter drift past 56 days, which puts the risk back on to the developer's shoulders.

It is possible to agree extensions of time with officers on Prior Approval applications (Article 7(c)) but it is not very often used, with Planning departments generally preferring to stick to the 8-week timeframe for administrative and grant-funding reasons (they receive money from Central Government for meeting planning delivery timescales).

The lack of resources and time in the public sector means that more and more officers are under pressure in terms of performance from their department heads to determine applications for Prior Approval within 8 weeks, and not agree to extensions of time. Therefore, it becomes all the more important that a thorough approach is adopted toward preparing any application and all issues of doubt or uncertainty closed off with technical reports or through the plans prior to submission.

Timing and strategy

The first practical issue to check is the timing of any Article 4 Directions. These are being introduced by several Councils against Class MA rights and the Direction should be checked carefully to see when it comes into force. Developers will normally have about 12 months to obtain Prior Approval before the Direction comes into force locally. Merely submitting the application to the Council in this time is not

enough. The approval must be granted before the relevant date.

This will mean charting a path back in the calendar to allow for the following:

1. Allow at least 8 weeks before the 'in force' date for the Direction, and then
2. Allow another 8 weeks on top of this for a planning application to be submitted first, in order to make changes to the exterior of the existing building to optimise unit numbers in the proposed conversion.
3. Allow extra time if possible (say, 2-4 weeks) for delays in registration, validation or determination of either planning application or prior approval, the need to extend timescales by agreement with officers and the instruction of experts.

Permission may need to be sought to change the size or position of windows and doors before applying for Prior Approval under Class MA, as prior approval can only be sought under Class MA for internal changes to layout and use.

Initial investigations: Daylight and sunlight

Along with noise investigations, in almost all cases involving Class MA proposals in built-up areas, expert advice should be sought from experts on daylight and sunlight. Both daylight and sunlight have to be tested (Class MA.2(2)(f) refers to the provision of 'natural light'). If this is not done and the developer submits an application merely assuming that 'it all looks alright' or 'the windows are large enough and there should be enough light coming in', then the risk is taken that officers later have concerns and then merely refuse the application without referral back to the applicant.

It must be remembered that the burden of proof that the permitted development requirements are met falls on the applicant. Therefore, it is dangerous to leave any issues of contention or uncertainty unexplored. It is usually far less expensive to pay for good advice early enough than to take the risk of a decision to save money on professionals – if you want to know the value of good advice, then wait to see the cost of bad advice.

It will normally take at least two weeks to obtain this advice from a sunlight and daylight expert. They will need plans in DWG format and either a site visit or a comprehensive photo record or aerial and street view. This is so they can map the site and all adjacent and neighbouring buildings in 3D and run computer simulations to calculate the results.

'Noisy neighbours'

Note should be taken of proximity to 'noisy neighbours', which could include any of the following for example:

- Restaurants
- Nightclubs
- Commercial units with nearby air conditioning units or other M&E
- Retail warehouses
- Transport hubs
- Delivery depots (e.g. Royal Mail)
- Railway lines

Noise from such uses, especially over weekends or unsociable hours, can affect habitable rooms. In extreme cases, this can affect the layout of units or the prospect of extra habitable rooms in the conversion and the number of units.

Therefore, as with sunlight and daylight, this should be checked early and an early noise assessment undertaken. Again, allow about two weeks at least for the survey and report, so that the architect can adjust the plans and discuss any possible mitigation with experts so as to avoid problems.

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In some cases, the local Environmental Health Officer (EHO) might just be fine with window restrictors or trickle vents to window frames, to allow for some natural ventilation. However, some EHOs might be more reluctant to allow permanently closed windows to habitable rooms and will not allow windows to habitable rooms at all on some facades, severely restraining the development potential.

Car-free obligations

It is becoming increasingly common in town centre and high street locations for Councils to seek to restrict future residents of development schemes from applying for on-street parking permits. This will often be secured through a Section 106 Unilateral Undertaking that the applicant can prepare themselves.

However, there is often a value added to the ability to park a car at or near one's home and it is not advisable to offer up a car-free scheme to the Council straight away. Instead, it can be worth presenting a Transport Statement to the Council to argue the case for, firstly, the availability of public transport and walking cycling routes locally, and secondly, plentiful available on-street car parking.

If the Council does require a Section 106 Undertaking, then your planning consultant may very well have an example of a typical agreement drafted in other similar cases, or some Councils have their own example documents that can be downloaded from their websites. The applicant (if they own the property), or current owner, plus any tenants and mortgagees have to sign such agreements, but not the Council.

It is advisable to find out from the Council within 4-5 weeks of the application start date whether the Council will insist on such an undertaking, so there is plenty of time for this to be prepared with at least a week to spare before the end of the 8-weeks and for it to be signed by all parties and sent to the Council before they prepare the delegated report and decision notice.

Conservation areas

Class MA permitted development rights are available on buildings within conservation areas, unlike the Class M rights. The former covers the new Commercial Use Class, Use Class E. The latter used to cover Class A1 and A2 uses (these are now in Class MA only) but still covers, betting shops, pay day loan shops, takeaways and launderettes.

When looking at a unit that is in a conservation area, it is important to consider the following:

- Is the property in a retail parade?
- Is the ground floor to premises in the street generally characterised by active ground floor uses?
- Are there any examples of properties at ground floor level that have been converted to residential use?

It is not always the case that a proportion of a current Use Class E has to be retained in a conservation area, but a Council ▶

can refuse Class MA prior approval if it feels that the character of the shopping frontage might be threatened by the loss of active uses at ground level, at least to the front of premises.

Planning advice should be sought on heritage factors that the Council will consider and whether in such a case, there may be an issue with the loss of the entire ground floor space to residential use.

If there are very few or no examples of non-active uses at ground floor in a conservation area, and it appears that part of the ground floor toward the front needs to retained for commercial use, then confirmation should be obtained in writing from local agents that a smaller unit of the size proposed would be lettable in the local market, so that the continued active use in the premises continues to contribute to the character of the conservation area.

Contamination and flood risk

As most conversions will not involve the breaking of ground or will only affect upper floors, then ground contamination is not an issue. In all cases, before making a decision on the need for a Stage 1 Preliminary Ground Contamination report for Class MA applications, a report should be obtained, such as a Groundsure report, to check the general level of risk for that location. These reports can be obtained online for about £150 and will often be obtained as part of the local searches undertaken during a property purchase.

Flood Risk Assessments will be needed in cases where the site, or part of the site is in Flood Zones 2 and 3. Even in Flood Zone 1, there may be cases where an FRA is still required, such as sites of 1 hectare or more, or where the Environment Agency has identified the site as having critical drainage problems or a local strategic flood risk assessment has identified a high risk of flooding from surface water rainage. Any FRA submitted must include data and enquiries obtained from or checked with the Environment Agency. This can slow down the submission of an application, unless the consultant chosen already has this information on record. An FRA submitted without this information will usually be refused on the basis of the FRA not being sufficiently rigorous and failing to prove the case in favour of the scheme in drainage terms.

Conclusions

Permitted development is often seen as quick or 'easy win' by new developers. It is no wonder therefore that many applications are still refused by local authorities for failing to make the case properly. Class MA rights are an important tool for managing risk and delivering a certain level of 'minimum value' in a scheme. However, the process and requirements should not be underestimated, or risks downplayed. Whilst reports may not be needed to cover all aspects of the assessment, who is instructed, how and when will be critical to the success of your Prior Approval application. PIN