

IN THE MATTER OF

THE REDUNDANT GLENCAIRN BOWLS CLUB, LONDON N11 2AH

OPINION

INTRODUCTION

1. Lousada Plc (“Lousada”) own the redundant Glencairn Bowls Club (“the Site”) and wish to maximise its beneficial use. The planning history is complex and is set out in my instructing solicitors’ letter which supports a prior approval application under Town and Country Planning (General Permitted Development) Order 2015 (“GPDO”) to authorise a change of use from the Site’s former use as a bowling club to use as a dwellinghouse. I do not propose to rehearse the planning history in any significant detail save to note the following:
 - a. In March 2022, during consideration by Haringay Borough Council (“HBC”) of a prior approval application under Class MA, the clubhouse was subject to an arson attack which caused considerable damage to its roof. As a consequence, the prior approval application was withdrawn;
 - b. Subsequently planning permission was secured for repairs to the building following the fire (“the Repair Permission”)¹. The Repair Permission was subject to a number of conditions including an apparent requirement to submit for approval a Method of Construction Statement². This condition remains undischarged.
2. Despite a number of previous prior approval applications being refused or withdrawn Lousada wish to make a further application. To that end I am asked a series of questions that I will address in this Opinion.

¹ Permission was granted on 20th April 2023 under Ref: HGY/2023/0364.

² Condition 3.

3. It is convenient to address questions 1 and 2 together.
 - (1) **Can an application under Class MA be submitted prior to the completion of the repairs to the building being completed?**
 - (2) **Could prior approval under Class MA be granted subject to a condition that the approved repair works take place prior to occupation of the building for residential purposes?**
4. If it is possible to impose a condition requiring the completion of the works under the Repair Permission before the change of use to a dwelling takes place then it follows that it must be lawful to make a prior approval application in advance of those works taking place. Indeed, there is nothing in GPDO which requires a building to be in a particular state of repair when prior approval is sought. I can envisage a situation whereby use as a dwelling can only take place if operational development takes place to render it possible. Given that Class MA does not authorise anything other than a change of use, the need for operational development may be a legitimate reason to refuse prior approval.
5. However, if planning permission exists for the necessary operational development and a condition can be imposed on any prior approval to ensure the completion of those works then there would be no sustainable basis (absent any other breach of the 'standard' conditions or requirements of Class MA) to withhold consent. Consequently, the important question is whether such a condition can be imposed.
6. Question 2, as I understand it, arises from Lousada's intention to provide HBC with sufficient reassurance that the change of use authorised by Class MA will not take place unless and until the repair works authorised by the Repair Permission have been completed. Ordinarily Lousada would have wished to complete all of the repair works before making the prior approval application but there have been significant delays in the determination of the application for the repairs to the Building.
7. The imposition of such a condition is lawful both as a matter of principle and in the particular circumstances of this case.

8. **First**, para. W(13) GPDO sets out the procedure for prior approval and provides as follows:

“The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval”.

9. Further, s.78 Town and Country Planning Act 1990 (“TCPA”) expressly recognises the power to impose conditions on a prior approval notification:

“Where a local planning authority—

- (a) refuse an application for planning permission or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions; or
- (c) refuse an application for any approval of that authority required under a development order, a local development order or a neighbourhood development order or grant it subject to conditions,

the applicant may by notice appeal to the Secretary of State.”

(emphasis added)

10. In this case, the application for prior approval under Class MA is an “approval of that authority required under a development order”³ and the reference to the approval being granted ‘subject to conditions’ identifies the planning authority’s power to impose a condition on a prior approval decision.
11. This interpretation is expressly supported by the case of *Pressland v Hammersmith and Fulham LBC* [2016] EWHC 1763 (Admin). This case concerned the ability of a local planning authority to entertain an application under s.73 TCPA to ‘vary’ conditions imposed by the GPDO as well as those imposed by a local authority on a prior approval decision. As part of his legal analysis the Learned Judge considered whether there was a power to

³ S.78(1)(c).

impose additional conditions on a prior approval and concluded – referring to s.78(1) TCPA – that it was:

“But the legislation does not expressly empower⁴, or provide any power to confer a power on, a local authority to impose any conditions on any such required consent, agreement or approval. Nonetheless it is plain from the terms of section 78(1)(b) of the 1990 Act that Parliament intended that such conditions could be imposed by the authority when granting such consent, agreement or approval.”⁵

12. I should also add that there are numerous examples of appeal decisions in which Inspectors have imposed additional conditions on a Class MA approval. For example:

- a. Appeal Ref: 3302802 in which the Inspector imposed an additional condition requiring noise attenuation works;
- b. Appeal Ref: 3299731. The Inspector imposed conditions requiring a Construction Logistics Plan, details of cycle storage and layout of parking spaces and a requirement to carry out development in accordance with a Flood Risk Assessment;
- c. In Appeal Ref: 3301688 conditions were imposed in relation to cycle storage, refuse and recycling facilities and soundproofing;
- d. Appeal Ref: 3292885 had similarities to the present case in that the Inspector imposed the following condition:

“The use hereby permitted shall not commence until the rooflights to the ground floor level and fenestration to the rear elevation of the ground floor and basement/lower ground floor levels of the building as shown on the plans submitted with the application and granted planning permission by the Local Planning Authority on 18 January 2022 as part of development with the application ref P2021/3133/FUL have been installed in accordance with the approved details. The rooflights and fenestration shall thereafter be retained.”

⁴ The version of the GPDO under consideration did not include para. W(13).

⁵ Judgment §29.

The Inspector's rationale for this condition was that although Class MA does not include provision for any building operations, the planning authority had subsequently been granted for alterations to fenestration and the installation of rooflights in order to provide sufficient daylight and sunlight go comply with Class MA⁶. This set of circumstances bears a striking resemblance to the current case and further supports the argument that it is possible to make a prior approval application before the works under the Repair Permission have been completed.

13. **Second**, I consider that the HBC has a relatively broad discretion as to the conditions that it may impose on a prior approval decision subject to the legal requirement that the conditions "fairly and reasonably relate to the permitted development"⁷ and that they meet the policy requirements set out in the NPPF⁸.
14. In the present case, a condition requiring the completion of the repair works would serve a useful planning purpose and is likely to be necessary to ensure that the change of use to a dwellinghouse is not acted upon unless and until the repairs are completed and the Building made watertight and habitable.
15. In all the circumstances it would be a lawful and sensible exercise of HBC's discretion to impose a condition requiring completion of the works under the Repair Permission before the Class MA change of use is implemented.

(3) Does the pending discharge of condition application pursuant to condition 3 of HGY/2023/0364 have any consequence to this approach in terms of timing?

16. Condition 3 provides as follows:

"No development shall take place, including any works of demolition, until a Method of Construction Statement, to include details of:

- a) parking and management of vehicles of site personnel, operatives and visitors;
- b) loading and unloading of plant and machinery;

⁶ Decision Letter §18 and 20.

⁷ *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 Q.B. 554.

⁸ NPPF §56.

- c) details of measures to protect pedestrians and other highways users from construction activities on the highway;
- d) timings of deliveries and other traffic related to the construction in order to minimise conflict with the main arrival and departure time of pupils from the neighbouring school.

Reason: To protect the amenity of neighbouring properties and to maintain traffic safety.”

- 17. I have reproduced the wording of the condition set out on the face of the decision notice deliberately. It does not make sense. There are plainly some missing words. It does not say what needs to be done with the Construction Method Statement (“CMS”) nor is there an implementation clause (*i.e.* what Lousada is to do with the CMS?). It is so nonsensical that it is arguably unlawful such that development can take place without a CMS. However, I shall proceed on the basis that the condition meant to require the submission of a CMS for HBC’s written approval and that the development should be carried out in accordance with the approved scheme.
- 18. In any event, since my original instructions were issued HBC have approved a CMS under reference HGY/2023/1318. The decision notice is dated 27th June 2023. Consequently – and again subject to my concerns about the poor wording of the condition – the works under the Repair Permission can proceed.
- 19. I advise accordingly but please do not hesitate to contact me with any further queries.

20th July 2023

JONATHAN EASTON KC
KINGS CHAMBERS
MANCHESTER-LEEDS-BIRMINGHAM