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## Appeal Decision

Site visit made on 12 July 2017

**by Michael Moffoot DipTP MRTPI DipMgt MCMI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 July 2017**

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**Appeal Ref: APP/M2325/W/17/3172860**

**4A Cyprus Avenue, Lytham St Annes FY8 1DY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO').
  - The appeal is made by Mr Gordon Rowatt against the decision of Fylde Borough Council.
  - The application Ref: 16/0581, dated 1 August 2016, was refused by notice dated 3 October 2016.
  - The development proposed is prior notification for change of use from storage or distribution buildings (Class B8) and any land within its curtilage to dwellinghouse (Class C3) under Schedule 2, Part 3, Class P of the General Permitted Development Order 2015.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. There is no description of the proposed development on the application form. Accordingly, I have taken the above description from the decision notice.
3. There is disagreement between the main parties as to whether the building is ancillary to No 4 Cyprus Avenue or comprises an independent planning unit. However, the main consideration is not the planning status of the building but rather whether the proposal would benefit from a permitted development right.
4. As I have concluded that the development falls outside the permitted development right there is no need to make a determination on the prior approval matters.

### Application for Costs

5. An application for costs was made by Mr Gordon Rowatt against Fylde Borough Council. This application is the subject of a separate Decision.

### Main Issue

6. The main issue in this case is whether the proposal would be permitted development under Schedule 2, Part 3, Class P of the GPDO.

### Reasons

7. The appeal site comprises a vacant two-storey building located to the rear of No 4 Cyprus Avenue which comprises a substantial two-storey semi-detached
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dwelling that has been converted to flats. The rear of the subject building adjoins the back gardens of semi-detached dwellings on Myra Road. The appellant states that the building is not linked by ownership or in any functional way to No 4.

8. Schedule 2, Part 3, Class P of the GPDO provides that 'development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule' is permitted development subject to certain restrictions and conditions set out in paragraphs P.1 and P.2 of Class P.
9. Paragraph P.1 states that development is not permitted by Class P if, amongst other things:
  - (a) the building was not used solely for a storage or distribution centre use on 19th March 2014 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use;
  - (b) the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.
10. With the application to the local planning authority for determination as to whether prior approval is required, the developer must submit a statement under the provisions of paragraph P.2(a). The statement must set out the evidence the developer relies upon to demonstrate that the building was used solely for a storage or distribution centre use on the date referred to in paragraph P.1(a) and for the period referred to in paragraph P.1(b).
11. The application is supported by a statutory declaration stating that the building has been in continuous use for storage purposes since 2001. The appellant submits that this storage use is therefore lawful. Reference is also made to the planning history of the building, including various applications for change of use from a 'garage/store' or 'coach house' to a dwelling and the associated decisions. These are merely broad descriptive terms, however, and do not demonstrate that the building has been used continuously for storage since 2001.
12. Apart from the statutory declaration, evidence in support of the appellant's claim regarding the use of the building is limited. The appellant contends that '*the property today is used for storage of some commercial goods and office stores and also various domestic items*'. However, from what I saw at my site visit most items appeared to be domestic in nature. They included ladders, doors, bricks/pavers, a washing machine, a sink, a bed, a settee, a sideboard and plumbing items. There was little evidence of commercial goods or office stores.
13. Nevertheless, it was apparent that the building was being used for storage. However, this is only a 'snapshot' in time, and I have seen no compelling evidence to show that the building has been used solely and continuously for storage purposes since 2001 as the appellant claims. For example, there is no evidence to show that rates relevant to its claimed use have been paid on the building, and photographic evidence only amounts to two undated photographs showing storage in one part of the building.

14. Furthermore, the occupiers of Nos 3 and 5 Myra Road to the immediate rear of the appeal site state that the building has never been used for commercial storage/distribution, and whilst it may have been used for casual personal/domestic storage many years ago it has since been abandoned.
15. As such, whilst I attach some weight to the statutory declaration, I find that the other evidence submitted by the appellant is not sufficiently compelling to demonstrate that the use of the building satisfies the tests set out in paragraph 9 (above). Accordingly, I conclude that the proposed change of use of the building to a dwelling would not accord with the requirements of Schedule 2, Part 3, Class P of the GPDO.

### **Conclusion**

16. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Michael Moffoot*

Inspector