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# Appeal Decision

Site visit made on 3 October 2016

**by D M Young BSc (Hons) MA MRTPI MIHE**

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

**Decision date: 24<sup>th</sup> October 2016**

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**Appeal Ref: APP/Q5300/W/16/3155193**

**Ground floor, 419 Hertford Road, Enfield EN3 5PT.**

- 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 1, Paragraph A4 of The Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Fastgrand Ltd against the decision of the Council of the London Borough of Enfield.
  - The application Ref 16/02211/PIA, dated 10 May 2016, was refused by notice dated 14 July 2016.
  - The development proposed is the change of use of ground floor from retail (A1) to 2 self-contained residential units (1 x 1-bed, 1 x 2-bed) (C3).
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## Decision

1. The appeal is dismissed

## Preliminary Matters

2. I have taken the application description from the Appeal Form as this is more succinct than the version provided on the Application Form.

## Reasons

3. The provisions of Schedule 2, Part 3, Class M of the GPDO permits a change of use from a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses), and building operations reasonably necessary to convert the building to such a use subject to a number of tests being met.
  4. The Council argue that the change of use does not comply with those tests set out in Part M.1. Specifically sections (i) and (ii) which stipulate that development is not permitted where the building was not used for the Class A1 use on 20 March 2013, 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. It is whether the proposal complies with this test that is the main issue in respect of this appeal.
  5. Although currently vacant, it is not disputed that the building was being used as a shop on 20 March 2013. However, crucially, I understand from the Council that the lawful use of the premises is as a minicab control room (*sui generis*) and not a shop. I have not received any substantive evidence to show otherwise, nor in relation to any claims as to other commercial uses prior to use as a shop. For that reason, I am unable to conclude that the building concerned was used for a use falling within Class A1 (shops) of the Schedule to the Uses Classes Order on 20 March 2013, or last used for that purpose before
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that, if not in use on that date. The proposed development is therefore not permitted by Class M of the GPDO.

6. The Appellant has put it to me that the GDPO does not expressly require the building to have the benefit of planning permission for the permitted use. However, I find this argument to be erroneous since Article 3(5) of the GPDO clearly states:

*(5) The permission granted by Schedule 2 shall not apply if—*

*(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;*

*(b) in the case of permission granted in connection with an existing use, that use is unlawful*

7. It therefore follows that as the A1 use was unlawful the tests in Article 3(5) are not met. Consequently, the proposal is development for which an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. Accordingly, the appeal is dismissed.

*D. M. Young*

Inspector