
Appeal Decision

Site visit made on 5 December 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 11 January 2017

Appeal Ref: APP/C5690/W/16/3158322

109 Brownhill Road, London SE6 2HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class M of Schedule 2, Part 3 of the Town & Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Asher Brecher against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/096840, dated 26 May 2016, was refused by notice dated 22 July 2016.
 - The development proposed is the change of use from commercial (Class A1) to residential (Class C3) in the form of a 2 bedroom, 3 person flat at ground floor level.
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Decision

1. This appeal is dismissed.

Procedural Matters

2. The appeal is made under the provisions of Class M of Schedule 2, Part 3 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This requires the local planning authority to assess the proposed development on the basis of its impact on transport and highways, contamination risks, flooding risks, the impact of the proposed change of use on the adequate provision of shops and services where there is a reasonable prospect of the building being used to provide such services, and the design or external appearance of the building.
3. The Council has confirmed that there are no transport and highways impacts, contamination risks or flood risks on the site. As such prior approval of these matters is not necessary. In addition, the Council suggests that matters relating to the external appearance of the building, which would involve replacement of the existing shop front, could be dealt with by means of a planning condition were I minded to allow this appeal. I concur with the Council's view that such a condition would be reasonably related to the subject matter of the prior approval. Consequently, prior approval of matters relating to the external appearance of the building is also not necessary.

Main Issues

4. The main issues are:
 - Whether sufficient information has been provided to demonstrate that the proposed change of use would not have a detrimental effect on the adequate provision of shops and services.
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- Whether there is a reasonable prospect of the building being used to provide such services.

Reasons

Effect on the provision of shops and services

5. The appeal property comprises a two storey mid terrace building having a vacant commercial shop unit on the ground floor, formerly used as a printing shop, with the first floor being in residential use. This part of Brownhill Road is a relatively long street comprised of predominantly terraced dwellings. The appeal property is located within a small parade of commercial units comprising shops, hot food takeaways and professional services that are sited on both sides of the road.
6. I accept that the appeal property is not located within a key shopping area. Nevertheless, paragraph M2 (1)(d)(i) of Class M of the GPDO requires consideration of the impact of the proposed change of use on the adequate provision of shops or financial and professional services within the locality.
7. Although the Council has not referred to any conflict with policies contained within the Development Plan, paragraph 70 of the National Planning Policy Framework (the Framework) advises, amongst other things, that in order to deliver the social, recreational and cultural facilities and services the community needs, planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
8. In this case, I have no evidence to determine the extent of the contribution that the existing use may, or may not, make to the provision of shops, services and facilities in the locality to meet the community's day-to-day needs. Although the appellant suggests the property is unviable for any small businesses as it cannot demand a normal market rental value due to fixed costs, lack of footfall and a small amount of passing trade, I have no evidence to clearly demonstrate that this is the case.
9. Given the importance that the Framework places on the loss of valued facilities and services, in this case I have no substantive evidence to demonstrate that the proposed change of use would not have a detrimental effect on the provision of such facilities and services to enable the community to meet its day-to-day needs.
10. Consequently, I am unable to determine that the proposed change of use would not lead to a harmful effect on the provision of shops and services within the parade to meet the local community's daily needs. As such, the proposal would fail to satisfy the requirements of paragraph M.2 (1)(d)(i) and therefore it would not be permitted development under Class M of the GPDO.

Prospect of building being used

11. Class M, paragraph M.2 (1)(d)(i) of the GPDO also requires consideration of whether there is a reasonable prospect of the building being used to provide services. The Council has not referred to any policies or criteria within the Development Plan that may provide a basis for the assessment as to whether there is a reasonable prospect of the building being used to provide services. However, in my view, as a minimum this would normally comprise of evidence

to show that attempts have been made to market the vacant unit for at least 12 months at an appropriate rent.

12. In this case I have no evidence to indicate whether any marketing has taken place to confirm, or otherwise, that there is no reasonable prospect of the building being used to provide services as required by Class M of the GPDO. Consequently, this adds to my findings that I am unable to determine that the proposed change of use would not lead to a harmful effect on the provision of shops and services within the parade to meet the local community's daily needs.
13. Given the paucity of substantive evidence before me, I am unable to conclude that the appeal building is incapable of being used to provide services. As such, the proposal would fail to satisfy the requirements of paragraph M.2 (1)(d)(i) and therefore it would not be permitted development under Class M of the GPDO.

Other matters

14. I have taken into account the fact that planning permission has previously been granted for the conversion of commercial premises (Class A1) to residential (Class A3) at Nos 103, 105 and 107 Brownhill Road. However, I do not have full details of the nature of these proposals or the circumstances and policy considerations that led to the Council finding such change of use to be acceptable in planning terms. Consequently, I cannot be sure that these are representative of the circumstance in this appeal and, in any case, I have determined this appeal on its own merits.

Conclusion

15. As a consequence of the lack of evidence to demonstrate the effect of the proposed change of use on the provision of shops and services in the locality and any evidence that demonstrates that the building is incapable of being used to provide such services, I have found that the proposed change of use cannot be undertaken as permitted development under Class M. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR