
Appeal Decisions

Site visit made on 21 March 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 31 March 2017

Appeal A - Appeal Ref: APP/G2625/W/16/3161517

3 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP

- 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 O of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr Trivedi (Trivedi House Ltd) against the decision of Norwich City Council.
 - The application Ref 16/01000/PDD, dated 2 July 2016, was refused by notice dated 30 August 2016.
 - The development proposed is change of use of a building for B1 (office) to Class C3 (dwelling house) to provide 2no 1 bedroom and 2no studio flats.
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Appeal B - Appeal Ref: APP/G2625/W/16/3161534

3 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Trivedi (Trivedi House Ltd) against the decision of Norwich City Council.
 - The application Ref 16/00989/F, dated 2 July 2016, was refused by notice dated 20 September 2016.
 - The development proposed is change of use and conversion of the ground floor from A2 to residential and A2 use to include a single dwelling unit. The A2 use is to remain for a reduced shop unit.
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Decisions

1. Appeal A is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 for the change of use of a building for B1(a) (office) to Class C3 (dwellinghouses) to provide 2no 1 bedroom and 2no studio flats at 3 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP in accordance with the terms of the application Ref 16/01000/PDD, dated 2 July 2016 subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the approved drawing 3117.0416N/A Sheet No.1.
 - 2) Prior to first occupation of any dwelling the cycle parking and refuse facilities shown on drawing ref: 3117.0416N/A Sheet No.1 shall be made available and thereafter permanently maintained to serve the needs of the development.
 2. Appeal B is dismissed.
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Application for Costs

3. An application for costs was made by Mr Trivedi (Trivedi House Ltd) against Norwich City Council in respect to Appeal A only. This application is the subject of a separate Decision.

Preliminary Matter

4. The Appeal A application form refers to the site as 'Woolgate Court, St Benedicts', whereas Appeal B identifies the site as 'No 3 Woolgate Court, St Benedicts Street'. As the Appeal A appeal form has used the clearer and more precise address of the building as used in Appeal B, I have applied this to the address for Appeal A in the banner heading above. I am satisfied neither party is prejudiced by me taking this decision. My findings below on the addresses of the building in question are a separate matter.

Appeal B Main Issue

5. The main issue is the effect of the proposed development on the viability of the retained commercial unit and on the living conditions of the future occupiers of the proposed property.

Reasons

Appeal A

6. Schedule 2, Part 3 Class O of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) permits the change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) to a use falling within Class C3 (dwellinghouses). Class O.1 of the GPDO sets out the criteria in which development is not permitted; the Council does not contest that any of these apply here. The appeal turns on whether the building is a single; or two planning units with one being the ground floor and the other being the first and second floors (the upper floors).
7. From my observations at my site visit, the upper floors of the appeal building display all the characteristics of a conventional office where no members of the public have access, and are in my judgement in B1(a) office use. The upper floors also have their own independent access from an enclosed courtyard and parking area surrounded by office development. These buildings are numbered 1 to 8 Woolgate Court. The address used for this appeal, 3 Woolgate Court, is thus consistent with the numbering of the office development.
8. The original planning permission for the Woolgate Court development (*Council Ref: 4891374/F*), advanced by the appellant with his written submissions, was described as, amongst other things, "*retention of facades of 55 St Benedicts Street and redevelopment of remainder of site of 55/57 St Benedicts Street with three shops, with offices above and five three storey office units and associated parking...*". This in my judgement indicates that the shops and offices were originally built as separate uses. Indeed I find little evidence before me which suggests that the said retail units on the ground floor would have had ancillary offices above.
9. The ground floor shop unit, which is occupied by the same business as that on the upper floors, appears to have a separate address, No 57 St Benedicts Street. I draw this conclusion firstly because the retail unit has an active

frontage and entrance from St Benedicts Street and not from Woolgate Court, and is directly adjacent to a shop which is identified on the submitted drawing, and also displays its address as No 59 St Benedicts Street on its fascia signage; and secondly because the planning decision for its change of use from A1 to A2 in 2002 (*Council Ref: 4/2002/0144/U*) clearly identifies the address as No 57 (and No 55a) St Benedicts Street, and I am satisfied the approved plans undoubtedly illustrate that the change of use applied only to the ground floor.

10. The Council places significant reliance on the business rates records for No 3 Woolgate Court, which it says shows this address has been in single occupancy since March 2007, and this is not disputed by the appellant. However, insufficient evidence is before me as to whether or not this record includes the ground floor unit, or whether a separate record under No 57 St Benedicts Street address exists. Furthermore, the Council has not sufficiently explained how in its view and in light of the evidence above, it reached the conclusion that the building as a whole had changed to an A2 use.
11. I do not find that the 2002 planning consent is a definitive indication that a new single planning unit has been formed, when considered alongside the other evidence set out above. I find therefore that both the situation on the ground and the terms of the original and subsequent planning permissions indicate a clear separation between the two parts of the building. The presence of an interconnecting door and the fact that both units are occupied by the same business does not in my judgement change this.

Conditions

12. Schedule 2, Part 3 Class W (13) states that prior approval may be granted subject to conditions reasonably necessary to the subject matter of the prior approval. I have considered the conditions suggested by the Council against paragraph 206 of the Framework. While Class W (12)(b) of the GPDO requires development to be carried out in accordance with the details provided in the application, I am content to impose a condition ensuring the development accords with the approved plan in the interests of clarity. A condition requiring the provision of bicycle and refuse storage prior to occupation is necessary to ensure such matters are duly and timely delivered. As Class O.2(2) of the GPDO specifically requires the development to be completed within three years, it is not necessary to duplicate the condition again.

Appeal B

13. The Council states, and not disputed by the appellant, that the ground floor shop falls within an identified secondary shopping area as defined by the Norwich Development Management Policies Local Plan 2014 (Local Plan). Local Plan policy DM20 seeks to retain retail activities in such locations and states that within defined primary and secondary retail areas, uses A2 to A5 will be permitted subject to certain criteria. Local Plan policy DM12 states that residential development will be permitted except where it involves the conversion of non-residential floor space at ground floor level within a primary or secondary retail area.
14. The appellant cites no conflict with Local Plan policies because such a unit would be retained, albeit considerably smaller in size than existing. However, little persuasive evidence is provided about how the use and functionality of the proposed A2 unit would continue to meaningfully contribute to the viability and

vitality of the shopping area, and I have serious misgivings that such a unit would do so. While I note an expression of interest has been made by a potential occupier, I do not find this represents robust evidence that such a small unit would be viable. Both from the submitted plans and from my site visit, I find the resultant A2 floor space would be extremely small, and because of this I have considerable doubts about its ability to be used for its stated and intended purpose, and subsequently the contribution it would make to the secondary shopping area.

15. The appellant states that the whole building has been marketed since 2015 without success. However, insufficient evidence is before me which demonstrates, amongst other things, how the marketing exercise was undertaken, the price sought, and whether it was reasonable for the surrounding area. As the building is still occupied, it was not self-evident from my site visit, and there is no written evidence before me, to suggest that the ground floor unit as existing is no longer fit for any retail purpose required by Local Plan policy DM20, and that it would be incapable of continuing to contribute to the secondary shopping area's viability and vitality.
16. For the same reason, I find inadequate justification has been advanced to support the loss of a significant proportion of the shop floor space for a residential unit. However, even if I were to accept that such a justification exists, I have significant concerns that the proposed unit would be poorly provided with natural light and outlook. The proposed living and kitchen room would be served by only one window some distance away from it. The bedroom window would be awkwardly positioned in a recessed area, and both windows would in my judgement have little effect in providing any meaningful natural light or ventilation to the habitable rooms they would serve. Furthermore, as both windows are within close proximity of, and directly project towards the flank wall of the adjacent building, I find the outlook for the future occupiers of the proposed property would also be somewhat poor. I am however satisfied that the unit would not be adversely overlooked by neighbouring properties as the Council suggests.
17. The appellant asserts that the Council cannot demonstrate a five year housing land supply. Insufficient evidence is before me to reach a firm conclusion on this matter. However, even if I were to accept the appellant's assertion to be correct, I am satisfied that the considerable harm I have identified above on both matters would significantly and demonstrably outweigh the negligible benefits of the scheme of the provision of one flat.
18. I find the proposed development would not accord with Local Plan as a whole, specifically with policies DM12 and DM20, details of which I have set out above, and Local Plan policies DM2 and DM13, which state that development and the conversion of existing buildings to flats will only be permitted where it provides for a high standard of amenity and satisfactory living conditions for future residents. The main parties also dispute whether the size of the proposed flat would comply with the Council's space standards. However, because I have found conflict in other areas as stated above, it is not necessary for me to consider this particular matter any further in my decision.

Other Matters

19. The appeal property lies within the Conservation Area. Neither party expresses a view regarding any effect of the proposal on the character or appearance of the said Conservation Area. Moreover, I have not been provided with any relevant development plan policies relating to such matters. Nonetheless, I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this respect, having regard to the fact that there would be no significant external alterations to the building, I am satisfied that those interests would be preserved.

Conclusion

20. In respect of Appeal A, I find on the evidence before me that the upper floors of the building, No 3 Woolgate Court, is a separate planning unit from the ground floor shop No 57 St Benedicts Street, that it is in B1(a) use, and thus it benefits from the rights afforded to under Class O of the GPDO. I conclude therefore that the appeal should be allowed.
21. In respect of Appeal B I conclude for the reasons given above that the appeal should be dismissed.

R Allen

INSPECTOR