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# Appeal Decision

Site visit made on 28 March 2017

**by Alex Hutson MATP CMLI MArborA**

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

**Decision date: 27 April 2017**

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**Appeal Ref: APP/D1590/W/16/3161670**

**39 Hamlet Court Road, Westcliff on Sea, Essex SS0 7LX**

- 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 M of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Mr I Gee against the decision of Southend-on-Sea Borough Council.
  - The application Ref 16/00958/PA3COU, dated 26 May 2016, was refused by notice dated 20 July 2016.
  - The development proposed is change of use from financial and professional services (Class A2) to three self-contained flats (Class C3).
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## Decision

1. The appeal is allowed and approval is granted for change of use from financial and professional services (Class A2) to three self-contained flats (Class C3) at 39 Hamlet Court Road, Westcliff on Sea, Essex SS0 7LX in accordance with the terms of the application, Ref 16/00958/PA3COU, dated 26 May 2016, and the plans submitted with it, subject to the following condition:
  - 1) Prior to the occupation of the development hereby permitted, details of refuse storage facilities shall be submitted to and approved in writing by the local planning authority. Refuse storage facilities shall be implemented in accordance with the approved details prior to the occupation of the development hereby permitted and shall be retained thereafter.

## Preliminary Matter

2. There is no description of the proposed development on the application form. I have therefore taken the description of the proposed development from the Council's Decision Notice.
  3. The Council's reason for refusal on its Decision Notice cites Paragraph M.2 Part 4 (i) and (ii) of Schedule 2, Part 2, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). There is no Schedule 2, Part 2, Class M of the GPDO. Nevertheless, it is clear that the planning application was made under Schedule 2, Part 3, Class M of the GPDO and was assessed by the Council on this basis.
  4. Following on from this, there is no Paragraph M.2 Part 4 (i) and (ii) of Schedule 2, Part 3, Class M of the GPDO. Having regard to the provisions of the GPDO and to the evidence, it appears that the Council meant to cite Paragraph M.2(1)(d)(i) and (ii) of Schedule 2, Part 3, Class M of the GPDO.
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This includes whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) because of the impact of the change of use on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or Class A2 (financial and professional services) but only where there is a reasonable prospect of the building being used to provide such services (i) or, where the building is located within a key shopping area, on the sustainability of that shopping area (ii). I have considered the appeal on this basis.

5. The Council considers that the proposal accords with the requirements set out in Paragraph M.1 of the GPDO so is permitted development. There is no evidence before me to the contrary and I have determined the appeal on this basis.

### **Main issue**

6. The main issue is whether it would be undesirable for the building to change to a use falling within Class C3 (dwellinghouses) having regard to the provisions of Paragraph M.2(1)(d)(i) and (ii) of Schedule 2, Part 3, Class M of the GPDO.

### **Reasons**

7. The appeal property comprises a ground floor unit located at the southern end of Hamlet Court Road, to the south of Canewdon Road. It lies within a Secondary Shopping Frontage as defined within the Southend-on-Sea Borough Council Development Management Document 2015 (DMD). Whilst currently vacant, the unit was previously in use as a bank (Class A2). The proposal seeks to convert part of the unit to provide 3 flats (Class C3) with the remaining part retained for a Class A2 use.
8. Under paragraph M.2(1)(d)(i) of the GPDO I need to address two matters. In summary, these are: whether there is a reasonable prospect of the building being used to provide Class A2 services; and if so, whether the change to a residential use would have an undesirable impact on the adequate provision of such services. The second matter is only engaged if the answer to the first matter is positive.
9. In respect of the first matter, the evidence suggests that the unit has been vacant for some years. The appellant contends that a marketing exercise was carried out by a property agent between October 2013 and February 2016 but was unsuccessful in sourcing a suitable tenant. However, the evidence does not indicate in detail the methods used to advertise the unit over this period. In addition, whilst the appellant refers to an email from the property agent in respect of the marketing carried out, this does not appear to have been submitted as evidence. Moreover, over a year has passed since the end of the marketing period and as such, any past marketing is unlikely to indicate any current level of demand or any changing economic climate since that time.
10. The appellant makes reference to the Council's Retail and Town Centre Study 2011 which allegedly concludes that there are many vacant properties in the locality and also that the area south of Canewdon Road does not make a positive contribution to the retail offer in the wider area. Nevertheless, I have not been provided with a copy of the Study to verify these claims. In addition, given the time that has passed since it was written, the findings of the Study are now likely to be considerably out of date. Furthermore, during my site

visit, I observed that there were few other vacant units in the vicinity of the appeal property.

11. Consequently, I consider that the evidence is insufficient to demonstrate that that there is no reasonable prospect of the unit as a whole being used to provide Class A2 services in the future. I therefore now turn to the second matter.
12. I observed a mix of uses along this part of Hamlet Court Road, including some other Class A2 units. I also note that a number of units previously in Class A1 use on the opposite side of Hamlet Court Road have been converted to a residential use, including Nos 28<sup>1</sup>, 30<sup>2</sup>, 38<sup>3</sup> and 42<sup>4</sup>. The principle of some residential use at ground floor level along this part of Hamlet Court Road has therefore already been established. In addition, the Council has not provided me with any compelling evidence that there are not a sufficient number of other units in a Class A2 use in the wider area, including along Hamlet Court Road to the north of Canewdon Road, which would maintain an adequate provision of such services for the needs of the local community. Furthermore, part of the unit would continue to provide an A2 use. Consequently, I am not persuaded that the change to a residential use would have an undesirable impact on the adequate provision of Class A2 services in the area.
13. The GPDO does not appear to define the term 'key shopping area'. The Council's Officer's Report and Appeal Statement do not elaborate in any great detail on what it considers such a definition should entail. I also note that when assessing the prior approval notification in respect of No 28, the Council considered that as that unit was in a Secondary Shopping Frontage rather than Primary Shopping Frontage, as defined by the Council's emerging Development Management Document at the time, it could not reasonably be said to be within a key shopping area. This seems to me to be a reasonable approach to take and as such, I do not consider the unit the subject of this appeal could reasonably be said to be within a key shopping area. As such, there is no specific requirement for me to consider the sustainability of the shopping area. Nevertheless, as I have found that the change of use would not have an undesirable impact on the adequate provision of Class A2 services in the area, it is unlikely to result in any harm in this regard in any case.
14. The Council raises the concern that the change of use would fail to maintain an active frontage and would appear out of keeping in this location. Nevertheless, given its previous use as a bank, it is unlikely that it would have maintained an active frontage in the same way that other units in the area do. Moreover, it does not display a traditional shop frontage in any case, but rather displays individual windows separated by wide stone pillars. Furthermore no changes are proposed to the external appearance of the unit. I therefore consider that the Council's concerns in this regard are unfounded.
15. I therefore conclude that it would not be undesirable for the building to change to a use falling within Class C3 (dwellinghouses) and would satisfy the provisions of Paragraph M.2(1)(d)(i) and (ii) of Schedule 2, Part 3, Class M of the GPDO.

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<sup>1</sup> Council Ref 15/00831/PA3COU

<sup>2</sup> Council Ref 15/00832/PA3COU

<sup>3</sup> Council Ref 16/00757/PA3COU

<sup>4</sup> Council Ref 14/01409/PA3COU

16. On this basis, I find no conflict with Policy DM13- Shopping Frontage Management outside the Town Centre, of the DMD; and Policy CP2- Town Centre and Retail Development, of the Southend-on-Sea Core Strategy Development Plan Document 1 2007. These policies seek to protect the function, character, vitality and viability of shopping areas within the Borough.

**Conditions**

17. The approval granted is subject to the statutory conditions set out at Paragraph M.2(3) of Schedule 2, Part 3, Class M of the GPDO. I have also had regard to the planning condition suggested by the Council in respect of refuse storage. I have amended this for the sake of clarity and conciseness. I agree it is necessary in the interests of efficient waste management.

**Conclusion**

18. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed and approval granted.

*Alex Hutson*

INSPECTOR