
Appeal Decision

Site visit made on 25 April 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 23 May 2017

Appeal Ref: APP/V5570/W/17/3167978
88 Balls Pond Road, London N1 4AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Balls Pond Securities Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2400/PRA, dated 9 June 2016, was refused by a notice dated 9 August 2016.
 - The development proposed is a change of use from Use Class A1 (Retail) to Use Class C3 (Residential).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Use Class A1 (Retail) to Use Class C3 (Residential) at 88 Balls Pond Road, London N1 4AJ in accordance with the terms of the application, Ref P2016/2400/PRA, dated 9 June 2016, and subject standard conditions set out in Paragraphs M.2 (3) and W (12) (a) of the GPDO and the following conditions:
 - 1) Before the first occupation of the dwelling details of the layout, design and appearance of the refuse/recycling enclosure shall be submitted to and approved in writing by the local planning authority. The approved refuse/recycling enclosure shall be provided in complete accordance with the approved details and shall be thereafter so maintained.
 - 2) Before the first occupation of the dwelling details of the layout, design and appearance of a covered bicycle storage area to serve no less than 1 cycle space shall be submitted to and approved in writing by local planning authority. The bicycle storage area shall be provided strictly in accordance with the approved details and shall be thereafter so maintained.

Procedural Matter

2. Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the change of use of a building from a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses), along with building operations reasonably necessary to convert the building.
 3. As part of the appeal submission the appellant has submitted amended drawing no: 1189-PD-002 Rev A which no longer shows the extension originally
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proposed to the premises and to ensure that the proposed development complies with Class M.1 (e). The Council is now satisfied that the appeal proposal would not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point, and therefore the second reason for refusal has been addressed. There is now no dispute between the main parties that the development would comply with the criteria of paragraph M.1 of the GPDO and is permitted development. On the evidence before me, I see no reason to disagree.

4. However, development permitted under Class M is subject to the condition that before commencement of the development an application must be made to determine whether prior approval is required in respect of the matters referred to in (a) – (e) of paragraph M.2 (1). The Council's reason for refusal raised no specific concerns in respect of transport and highway impacts, contamination risks, flooding risks or the design or external appearance of the development.
5. Paragraph M.2 (1) (d) (i) states that prior approval must be sought as to 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 (retail) or A2 (financial and professional services), but only where there is a reasonable prospect of the building being used to provide such services.

Main Issue

6. The main issue in this case 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 (retail), or A2 (financial and professional services).

Reasons

7. 88 Balls Pond Road is a three-storey mid terraced property which is located less than half a kilometre from Dalston Junction which is a main town centre. The ground floor of the premises is currently vacant, and its upper floors are in residential use. Within the terrace row there are a number of other vacant ground floor units which are boarded up, burnt out, and some units have been converted to residential use.
8. The Council are concerned that in the absence of marketing evidence being provided to demonstrate that there is a lack of demand for this retail floor space, which is a requirement of Policy DM4.7 of Islington's Local Plan: Development Management Policies 2007 (DMP), then the premises has a reasonable prospect of being used for those purposes and the proposal would impact on the provision of A1, A2 and sui generis uses in the area. However, this is not an application to which S38 (6) of the Planning and Compensation Act 2004 applies. Consequently, although it is a material consideration that the Council wish to support and protect dispersed shops outside designated town centre and local shopping areas, prior approval is only required for the specific grounds set out in paragraph M 2 (1)(d)(i) of the GPDO, and not whether the proposal would comply with the specific terms of Policy DM4.7.

9. The area immediately surrounding the appeal premises has a mixed character. Residential properties dominate the southern side of Balls Pond Road and there are residential properties interspersed between retail and commercial units along its northern side. From what I saw on my visit to the site and from the evidence submitted with the application¹, it is clear to me that Dalston Junction Town Centre together with the local centres on Balls Pond Road and King Henry's Walk provide a good range of shops and services, including convenience stores. Furthermore they are all available within 300m of the site.
10. Balls Pond Road is a major road and the appeal site has good access to public transport. I recognise that there may not be a wide range of A1/A2 uses within the terrace row where the appeal premise is located; however Dalston Junction and the local centres described above are only a few minutes' walk away. The shops and services they provide are therefore as equally accessible to local residents as the appeal site is, including to those residents who reside on Culford and De Beauvoir Roads. On this basis I am satisfied that there is an adequate level of provision of shops and services available to meet the needs of local residents.
11. Furthermore, the appeal premise has been vacant for at some 12 years. Whilst it may not have been actively marketed during that period, the number of vacant units within the row, and its general appearance of neglect would indicate that there is limited demand for such uses in this marginal location. In my view this is hardly surprising given the appeal sites close proximity to a more vibrant shopping area where there are other more attractive vacant properties available. There are already a number of other residential properties at ground floor level within this row, and overall this dispersed shopping area does not display an active frontage or function as a key shopping area. The introduction of a further residential use would add to the overall vitality and visual qualities of the area and I have not been provided with any evidence to persuade me that it would have a harmful effect on the character, function or viability of the area.
12. I understand that the Council consider that the marketing requirements of Policy DM4.7 provide a robust means of assessing whether or not the unit has a reasonable prospect of being used for A1/A2 shops and services. I have also taken into account the appeal decisions and case law referred to by the Council and the appellant in respect of how much weight, if any, should be given to the development plan in the determination of prior approval applications. However, even if I were to find that the premises had a reasonable prospect of being reutilised; it would not alter my conclusion in this case, that an adequate level of shops and services would be retained in the local area. Consequently I give limited weight to the need to undertake a marketing exercise.
13. In the absence of any substantive evidence that would indicate otherwise, in my view it would not be undesirable for the building to change to a use falling within Class C3 as it would not have a harmful impact on the provision of A1/A2 shops and services in the area.

¹ Planning and Retail Impact Statement, 84 Balls Pond Road, Prepared by Barton Wilmore, June 2016

Conditions

14. Standard conditions set out in Paragraphs M.2 (3) and W (12) (a) of the GPDO apply. Paragraph W (13) also allows for the grant of prior approval subject to conditions reasonably related to the subject matter of the prior approval.
15. The Council has suggested a number of conditions which I have considered against advice in the National Planning Policy Framework and Planning Practice Guide. As a result I have amended some for clarity and omitted others.
16. I have imposed a condition to secure appropriate refuse disposal facilities to safeguard the character and appearance of the area. I have also imposed a condition to secure cycle parking to encourage the use of sustainable mode of transport.
17. I have taken into consideration the Council's policy in relation to 'car free' housing and their suggested condition to secure this. However, the Council has not provided a reason as to why the suggested condition is necessary in this case. The site lies in a sustainable location close to shops and services and with excellent access to public transport. Furthermore, the existing use of the site as a retail shop would be likely to generate traffic. I have not been provided with any evidence to suggest that there is a particular issue with parking in the vicinity of the site, and equally the Council has not indicated how the proposed change of use would increase congestion in the area. I do not therefore consider that would be reasonable or necessary, in the interests of transport or highway impacts, to impose a 'car free' condition in this case.

Conclusion

18. For the reasons given above I have found that the proposed development would be acceptable in terms of the impact it would have on the provision of A1/A2 shops and services. I therefore conclude that the appeal should be allowed.

Elizabeth Pleasant

INSPECTOR