
Appeal Decision

Site visit made on 23 May 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 08 June 2017

Appeal Ref: APP/V5570/W/17/3170690

Part Ground Floor and Mezzanine, 172 Blackstock Road, London N5 1HA

- 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, paragraph M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Andrew Haralambous against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/4938/PRA, dated 9 December 2016, was refused by notice dated 8 February 2017.
 - The development proposed is the change of use of part of the ground floor and mezzanine sales area from (A1) to create a residential unit (C3).
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, paragraph M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of part of the ground floor and mezzanine sales area from (A1) to create a residential unit (C3) at Part Ground Floor and Mezzanine, 172 Blackstock Road, London N5 1HA in accordance with the terms of the application Ref P2016/4938/PRA, dated 9 December 2016, and the plans submitted with it, subject to the standard conditions set out in Paragraphs M.2 (3) and W (12) (a) of the GPDO and the following conditions:
 - 1) The residential use hereby approved shall not be occupied until details of the layout, design and appearance of the covered and secure bicycle storage area for no less than 1 bicycle has been submitted to and approved in writing by the local planning authority. The residential use hereby approved shall not be occupied until the bicycle storage area has been provided strictly in accordance with the approved details. The bicycle storage area shall thereafter be kept available for the parking of bicycles.
 - 2) The residential use hereby approved shall not be occupied until details of the layout, design and appearance of a refuse/recycling enclosure has been submitted to and approved in writing by the local planning authority. The refuse/recycling enclosure shall be provided strictly in accordance with the details so approved, provided prior to the first occupation of the development, and retained as such thereafter.
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Procedural Matter

2. I have used the description of development given on the decision notice in respect of the scheme as this adequately captures the scope of the proposed development.

Background and Main Issue

3. This appeal follows the Council's refusal to grant prior approval for a change of use from retail to residential arising from Class M of the GPDO. Amongst other matters, the GPDO establishes in paragraph M.2 (d) that the assessment of a prior approval application includes whether it is undesirable for the building to change to a residential use because of the impacts of that change on the sustainability of a key shopping area. The development plan establishes that the appeal property is within Finsbury Park Town Centre which I consider to be a key shopping area.
4. Accordingly, I consider the main issue in this appeal to be whether the proposed development would be undesirable due to its impacts on the sustainability of a key shopping area.

Reasons

Site, surroundings and proposed development

5. Set within a row of buildings with predominantly commercial frontages, but with residential uses at upper levels, the appeal property's basement, ground floor and mezzanine are in commercial use. I saw in the immediate environs of the appeal property, with the exception of the larger unit at the corner of Blackstock Road and Hurlock Street, that there were few visibly empty commercial premises, and that the size and uses of units varied considerably.
6. The proposed development seeks to change the use of the rear element of the appeal property to provide a 1 bed dwelling split over the ground floor and mezzanine levels. The front of the ground floor, the basement, and the shop frontage would remain in commercial use.

Sustainability of Finsbury Park Town Centre

7. Whilst the proposed development would reduce the amount of commercial floorspace within the appeal property, it would nevertheless retain its commercial frontage. Moreover, a considerable proportion of the appeal property would remain in retail use. Whilst I note the Council's comments regarding the limited depth of retail space that would remain, I saw that units of this depth are not unusual in the surrounding area, and that the proposed development would convert an area of the appeal building that is a relatively recent rear extension to the original building. Moreover, I am mindful of the estate agent's letter¹ submitted by the appellant that points to the demand for commercial units of around the size that would result from the proposed development, due to affordability of their rents and rates when compared to larger premises.
8. I saw the visibly empty property with a dual frontage on Blackstock Road and Hurlock Street at the corner of the appeal property's block. Whilst I have no

¹ Undated letter from Capital Homes Estate Agents & Valuers included as Appendix 2 of the Statement in Support of Prior Approval Application dated December 2016

substantive details before me indicating the length of time that this property has been empty, it is a unit of substantial size, with marketing boards indicating its availability. This unit is both of a depth and area that contributes variety to the unit sizes in the town centre, and its vacancy adds a degree of weight to the conclusions of the estate agent's letter.

9. I am aware that the term 'sustainability' is not defined within the GPDO. However, in its normal usage it picks out concepts of the ability of a thing to endure at a certain rate or level. Moreover, in terms of the National Planning Policy Framework (the Framework), which the GPDO² establishes is a relevant determinative factor in the assessment of applications for prior approval under Class M, 'sustainability' includes economic, environmental and social aspects.
10. In terms of the normal usage of the word 'sustainability', the proposed development would retain the appeal building's retail frontage and presence, and would supply a commercial unit of a size attractive to a diverse range of potential users. Due to this continued and conspicuous commercial use of the front part of the appeal property, the proposed development would not impair, to any material degree, the ability of the town centre to endure at the level it operates at now. In terms of the Framework definition, the commercial use of the front part of the appeal building would continue to contribute to the economic and social sustainability of the centre, and the proposed development's use of an existing building in an accessible location would point to a lack of environmental harm. Taking these matters together, I consider that the proposed development would not lead to a harmful impact on the sustainability, in the widest sense, of Finsbury Park Town Centre.
11. I note the Council consider that the proposed development would not comply with Policy DM4.7 of Islington's Development Management Policies (adopted June 2013) (the DM Policies), in that the appeal property has not been empty and marketed for a continuous period of 24 months, and that consequently there is no compelling evidence to suggest that the whole of the floorspace is not required for retail use.
12. I am conscious of the case law³ and previous appeal⁴ cited by the Council, and I am mindful that the development plan is a material consideration in the assessment of proposals subject to the prior approval procedure. However, such decisions are not subject to section 70(2) of the Town and Country Planning Act 1990, or section 38(6) of the Planning and Compulsory Purchase Order Act 2004. Consequently, as I have found no harmful impacts to the sustainability of the town centre arising from the proposed development, its non-compliance with Policy DM4.7 of the DM Policies is not a matter that weighs heavily against approval of the appeal scheme. In arriving at this view, I have been mindful of the appeal decision referred to me by the Council⁵, although as that former scheme proposed a total loss of retail frontage and commercial floorspace at the premises, it can clearly be distinguished from the current case.
13. Thus for the reasons given above I conclude that the proposed development would not have a harmful impact on the sustainability of Finsbury Park Town

² At Paragraph W (10)(b)

³ *J C Decaux Ltd v First Secretary of State* [2003] EWHC 407 (Admin)

⁴ Appeal reference: APP/NO410/A/14/2215541

⁵ Appeal reference: APP/V5570/W/16/3152884

Centre. As a result it would meet the requirements of Schedule 2, Part 3, paragraph M of the GPDO in that it has not been established that it is undesirable for the building to change to a residential use because of the impacts of that change on the sustainability of a key shopping area.

Other Matters

14. The proposed development is limited in scale and restricted to a substantial degree to internal changes to the premises. As a result, I consider that any construction activity involved is unlikely to be of a duration or extent that would cause material harm to the living conditions of the occupants of adjacent dwellings. Access to areas communal to the appeal property and its neighbours by people involved in construction or indeed the proposed development's future occupants, is essentially a private matter that is not instrumental in my assessment of the planning merits of the appeal.
15. As no external enlargement or additions are proposed I consider that the proposed development would avoid harmful effects to the availability of light and outlook to the occupants of adjacent properties. I saw that the inter-visibility with the appeal property's windows and those of adjacent properties would be so limited that adverse privacy impacts to their occupants would be avoided.
16. Given the mixed use nature of the wider area, and the limited size of the proposed dwelling, I consider that residential use of the building as proposed would not lead to levels of noise and disturbance that would be of material harm to the living conditions of the occupants of adjacent dwellings. I am mindful of comments regarding refuse created by the proposed development. However, in these regards I consider that a condition requiring appropriate provision of bin and recycling storage would ensure that the proposed development would make adequate arrangements in these regards.
17. Thus as no material harm would be caused by the development in these regards, I consider that it has not been demonstrated that it would be a harmful overdevelopment of the site. Neither do any of these other matters alter my conclusions in respect of the main issue given above.

Conditions

18. The GPDO sets the following standard conditions for this class of development proposal in Paragraph M.2 (3), as follows:

Development under Class M is permitted subject to the condition that—

(a) development under Class M(a), and under Class M(b), if any, must be completed within a period of 3 years starting with the prior approval date; and

(b) a building which has changed use under Class M is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse.

19. Paragraph W (12) of the GPDO also imposes the following condition:
The development must be carried out—
(a) where prior approval is required, in accordance with the details approved by the local planning authority.

20. Aside from these conditions, Paragraph W (13) of the GPDO makes it clear that prior approval can be subject to further conditions reasonably related to the subject matter of the prior approval. Accordingly, I have considered the suggested conditions supplied by the Council in this context and also assessed them against the tests given in paragraph 206 of the Framework. This states that conditions should only be imposed where they are necessary, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Where I have attached conditions, I have amended their wording, where necessary in the interests of clarity.
21. I have found it necessary, as the design and external appearance of the building are relevant considerations, to attach a condition requiring the submission of details of bin and recycling storage to the Council for its approval. This will ensure that the proposed development makes acceptable arrangements in these regards, and that the design of the storage is sympathetic to the external appearance of the building.
22. The transport and highways impacts of proposed developments are relevant considerations in the assessment of applications for prior approval of this type. Accordingly, I have attached a condition for the proposed development to supply details of cycle-parking to the local authority for its approval for implementation prior to first occupation of the development. This is to ensure that the proposed development makes appropriate arrangements in this regard.
23. I have been supplied with copies of the development plan policies relating to car-free residential development. However, the proposed development is in an area with an excellent Public Transport Accessibility Rating level of 6a. It is also located close to a good mix of local services and employment opportunities. Furthermore, the modest size of the proposed dwelling and the small amount of occupants it could accommodate lead me to the view that any additional pressure for parking adjacent to the appeal building would be extremely limited. Moreover, I have been supplied with no substantive evidence regarding the levels of parking stress adjacent to the appeal site.
24. Due to these matters, and taken together with the condition requiring the provision of an appropriate amount of cycle parking, I consider that the development would not cause undue pressure on the availability of local on-street car parking to a degree that would cause material harm to highway safety or impair the efficient movement of traffic. Therefore these considerations lead me to the view that the proposed development would cause no significantly harmful transport or highways impacts. Consequently, a condition restricting the availability of car-parking permits for future occupants of the scheme would be unnecessary in this case.
25. As the GPDO attaches a condition with regard to implementation I see no necessity to attach the standard implementation condition, as suggested by the Council.

Conclusion

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort INSPECTOR