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# Appeal Decision

Site visit made on 6 June 2017

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

**Decision date: 13<sup>th</sup> June 2017**

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**Appeal Ref: APP/W1905/W/17/3170184**

**1 Masons Parade, Newgatestreet Road, Goffs Oak, Hertfordshire, EN7 5RJ**

- 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 & Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Mr Ahmet Salih against the decision of Borough of Broxbourne.
  - The application Ref 07/16/1112/PNA1RES, dated 17 August 2016, was refused by notice dated 28 November 2016.
  - The development proposed is prior notification of change of use of ground floor from shop (A1) to residential (C3).
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. I have used the description of the development from the decision notice as this is more precise than the description given in the application form.

## Main Issues

3. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015.

## Reasons

4. Class M of the GPDO permits a change of use from a use falling within Class A1 (shops), Class A2 (financial and professional services), specified sui generis uses to a use falling within Class C3 (dwellinghouses), and building operations reasonably necessary to convert the building to such a use subject to a range of criteria. Specified sui generis uses include a betting office, a pay day loan shop or laundrette, or a mixed use of any of the above with residential.
  5. Development is not permitted where the building was not used for the Class A1 use on 20 March 2013, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use (M.1 (a)).
  6. Historically, based on the planning history for the appeal premises, the unit has been in A1 use for a number of years. The Council also confirmed in a letter dated 30<sup>th</sup> June 2008 that no change of use had taken place of the unit, following investigations into this matter following concern raised by an anonymous local resident. Correspondence confirmed, at that time, the shop
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was used as part of a business 'Ali Designs' selling personalised cards and invitations.

7. However, the use of the unit on 20 March 2013 is somewhat unclear. The use as a card shop appears to have ceased at an unknown point in time. The appellant, in the application form under description of development identifies the use of the building on 20<sup>th</sup> March 2013 as an "*administration office for my private hire taxi business, which is pre-booked only, run via telephone, text messages or e-mail.*" The frontage also has a fascia sign for Goffs Oak Car Establishment.
8. While the appellant considers that the A1 use has never changed, such a use would not fall under class A1 as taxi businesses are typically considered as sui generis. Moreover, as a sui generis use this would not form one of the specified sui generis uses under M(a). None of the other evidence submitted provides any details to show otherwise. The email (dated 29 December 2016) from the Council's Revenue Team who visited the property in on 21<sup>st</sup> December 2016 clarifies that the property is occupied and in use. It does not, however, confirm what that use is as a planning unit. I am also mindful that the Council have confirmed that for business rates purposes, the premises had been registered for use in association with the taxi business.
9. I am therefore unable to conclude that the appeal property was used for a use falling within Class A1 (shops) of the Schedule to the Uses Classes Order on 20 March 2013, or last used for that purpose before that, if not in use on that date. The proposed development is therefore not permitted by Class M of the GPDO.
10. Criterion M.1 (e) specifies that the development should not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. As part of the proposals, the existing shop front is to be bricked up and replaced by a front door and window serving the downstairs room. A fixed porch canopy is also proposed to be erected.
11. The appellant submits that the existing retractable canopy and shutter box have been in place for a significant number of years. The shutter box projects out from the front elevation. When in use the retractable canopy extends to around 190cm outwards from the front elevation. The proposed porch canopy would be approximately 60cm in depth therefore it is submitted that it would not represent any increase in the existing external dimensions of the building.
12. However, the existing canopy is retractable whereas the proposed porch canopy would be a fixed structure. While the proposed porch would be modest in scale and that Class M does allow for building operations which are reasonably necessary, criterion M.1 (e) is clear and I consider that it does represent a permanent structure beyond the existing external dimensions of the building. This is clearly illustrated on the submitted left side elevational plans. Again I find that the proposed development is therefore not permitted by Class M of the GPDO in this respect.
13. It is also disputed as to whether the application was valid when it was originally submitted and whether or not the appellant was notified of the Council's decision within the 56 days specified in Class W of Schedule 2, Part 3 of the GPDO. Concern has been raised in respect of the Council's handling of the

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application in this regard. However, regardless as to whether or not such a notification was made in that timeframe, in order for permission to be deemed to have been granted, it must firstly be established as to whether the proposal would be within the scope of permitted development. Consideration in relation time scales for the determination of prior approval is a follow-on condition which can therefore only apply if the development is otherwise permitted development.

14. Therefore, in light of my conclusion that it is not permitted development, no further consideration is necessary in respect of whether or not the Council determined the prior approval application within the 56 days referred to above.
15. Consequently, it would be development for which an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO.

### **Conclusion**

16. For the reasons given above, I conclude that the appeal should be dismissed.

*C Searson*  
INSPECTOR