



Appeal Decision

Site visit made on 25 July 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 1 August 2017

Appeal Ref: APP/N5090/W/17/3172902

8 Station Road, East Barnet, Barnet EN5 1QW

- 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 Kurt Fritzscht of Leo Carton Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/4977/PNR, dated 27 July 2016, was refused by notice dated 3 October 2016.
 - The development proposed is change of use from A1 retail to C3 residential comprising two self-contained flats.
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Decision

1. The appeal is allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use from A1 retail to C3 residential comprising two self-contained flats at land at 8 Station Road, East Barnet, Barnet EN5 1QW in accordance with the terms of the application Ref 16/4977/PNR, dated 27 July 2016, subject to the following conditions:
 - 1) The development hereby permitted must be completed not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 902/16/01, 902/16/02, 902/16/03 & 902/16/04.

Main Issue

2. Whether the proposal would be permitted development, having regard to Schedule 2, Part 3, Class M, paragraphs M.1 (a) and M.2 (1)(d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

3. 8 Station Road (No 8) is a three storey mid-terrace building, with a restaurant/takeaway on the ground floor and residential flats above. The appeal site comprises a single storey extension (the extension) at the rear of No 8. The rest of the terrace has a mix of uses at ground floor level including shops, cafes and offices, with residential uses above.

Whether permitted development

4. Class M of the GPDO permits the change of a building from a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses). In order to be permitted under Class M, the proposal would firstly have to comply with the limitations at paragraphs M.1 (a)-(g). The effect of paragraph M.1 (a) (ii) is to permit a change to a residential use where a building was last used as a shop, but such use had ceased before 20 March 2013.
5. Examination of the available evidence concerning the last use of the extension is analogous to making a determination under Section 191 of the Planning Act¹. Therefore, I have had regard to the Planning Practice Guidance (PPG) section '*Lawful Development Certificates*'. Paragraph 006² indicates that if the available evidence does not contradict or otherwise make an applicant's version of events less than probable then there would be no good reason to refuse an application in respect of an existing use, provided the applicant's evidence alone is sufficiently precise and unambiguous. Paragraph 006 also makes it clear that the relevant test to be applied to the evidence is on the balance of probability.
6. Three statutory Declarations have been supplied with the appeal to support the appellant's contention that the extension was used as a shop for the sale of pine furniture from March 1994 until December 2005. In his Declaration, Mr Robert Dolman (RD) states that he was employed as the manager of "*St Johns Pine*" from 1992 until 2005, by a Mr Martin. In 1994 the business moved to the extension. RD states that he undertook the day-to-day running of the shop, which sold pine furniture to the public, between 1994 and 2005.
7. In his Statutory Declaration, the appellant (KF) states that his parents used the extension as part of their retail bakery at No 8 until 1990. Their company then licenced the extension to Mr. Martin on 30 March 1994. KF states that he regularly visited No 8 to collect rent payments and to maintain the flats above during the period that "*St Johns Pine*" occupied the extension and the only use was for the sale of pine furniture. The business occupied the extension until December 2005 and it has since remained empty. The appellant's mother largely reiterates the above in her Declaration.
8. None of the contemporaneous documents in the exhibits supporting the above Declarations expressly refer to the extension being used as a shop. Therefore, those documents provide a limited insight into the nature of the business being conducted there between March 1994 and December 2005. Consequently, the appellant's case is largely reliant on the personal recollections of the individuals supplying the Declarations. Nevertheless, RD's evidence clearly describes what would ordinarily be regarded as a retail use being made of the extension during the above period. This evidence is largely corroborated by the appellant's own observations of the use.
9. The Council do not dispute that "*St Johns Pine*" traded from the extension during the above period. They have not provided any detailed evidence concerning how the business operated which would cast any significant doubt on the appellant's description of events. Consequently, I do not regard a more detailed account of the day-to-day running of the business or further details of

¹ Certificate of Lawful Existing Use or Development.

² Reference ID: 17c-006-20140306.

the internal layout (if either were indeed possible having regard to the passage of time) as being reasonably necessary in order to provide further clarity as to use of the extension during the above period.

10. RD's evidence also states that the internal corridor between the extension and Station Road was wide enough to carry furniture through to customers' cars, as some was sold part-assembled. Further, he deals with how the business was advertised. The latter appears to have included a sign clearly displayed at the customer entrance on Station Road. RD's evidence does not suggest that the shop had an unusually low public profile, that it would have been particularly difficult for customers to access, or that there were serious difficulties in moving furniture from it. RD and the appellant also confirmed that furniture was not assembled at the extension. Again, the Council has not provided any firm evidence that would cast doubt on these recollections.
11. The absence of a substantial road frontage and a shopfront would not inevitably preclude a retail use taking place. Many retail uses successfully operate without a shopfront, for example retail enterprises located above or at the rear of other businesses with a road frontage. Therefore, whilst I accept that the extension could have been used for storage with ancillary sales outside of Class A1, in the absence of any firm evidence to that effect it remains little more than a possibility.
12. The Council criticised the Statutory Declarations as not being impartial. Nevertheless, they were provided by the appellant and the other persons in the best position to give an accurate account of the use of the extension. The appellant's evidence is precise and unambiguous. The Council has not produced any firm evidence of its own concerning how the extension was last used, which might have suggested that the appellant's evidence was less than probable. Consequently, I have to give the appellant's evidence substantial weight.
13. Therefore, I find that on the basis of the evidence before me and on the balance of probability, the extension was last used as a shop within Class A1. Accordingly, the proposal would comply with limitation M.1 (a) (ii). The Council did not find any other breach of the limitations at paragraphs M.1 (b)–(g). In my own assessment, I found no reason to reach different conclusions in respect of those matters.
14. Although not part of its reason for refusal, the Council have also referred to a lack of information to enable an assessment to be undertaken pursuant to paragraph M.2 (1)(d), of whether it is undesirable for the extension to change to residential use because of the resulting impact on the adequate provision of shops.
15. I acknowledge that no details of any attempts to let or sell the extension as a shop have been supplied by the appellant. However, the available evidence suggests that the extension has been vacant for almost twelve years. As he would have wished to maximise his income, it is unlikely that the appellant would have kept the extension vacant for that period of time, if there were any retail businesses actually interested in letting it. I understand that "*St Johns Pine*" was able to operate from the extension as it sold high priced items which meant that a high turnover of stock was unnecessary to achieve a profit. It is unlikely that many other retail operators would have a similar business model. The 'backland' position of the extension is also likely to significantly limit its

attractiveness to retail users, compared with frontage properties. Also, in my experience there has been a progressive decline nationally over the past decade in the number of retail uses found in more peripheral parts of shopping areas, similar to that in which the extension is located. To my mind, all of these factors cast substantial doubt on whether there would be a reasonable prospect of the extension being used to provide a shop in the future.

16. Moreover, the extension is not within a protected shopping frontage or area. The Council have not supplied any evidence to suggest that there is an identified shortage of retail floorspace in the locality or in the Borough in general. Consequently, there is little information before me to suggest that the proposal would have a harmful impact on the adequate provision of retail uses.
17. For all the above reasons, I conclude that the proposal would comply with paragraph (1) (d) of condition M.2. According to the Council, the proposal would have no adverse transport and highways impact and there would be no contamination or flooding risks. There were no objections in terms of the design and external appearance of the proposal. I have not found any reason to reach different conclusions in respect of any of these matters. Therefore, the proposal would also comply with sub-paragraphs (a)-(c) and (e) of condition M.2 (1).

Other matters

18. The submitted plans show washing and shower facilities and space capable of accommodating a bed. Even so, the above and the shared access arrangements with No 8 and the flats above do not materially affect whether the proposal would be permitted by the GPDO.

Conditions

19. The GPDO requires the development to be completed within three years and to be carried out in accordance with the approved plans. I have therefore imposed conditions accordingly.

Conclusion

20. The proposal would comply with the limitations and conditions of Schedule 2, Part 3, Class M of the GPDO. Therefore, I conclude that the appeal should be allowed.

Stephen Hawkins

INSPECTOR