
Appeal Decisions

Site visit made on 19 December 2017

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2018

Appeal A Ref: APP/Z5630/W/17/ 3188026

Building to the rear of 402-404 Ewell Road, London KT6 7HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class M of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Niall Smyth, Redtree Ventures, against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 17/10287/PNRR, dated 21 July 2017, was refused by notice dated 19 September 2017.
 - The development proposed is the change of use from financial and professional services (Class A2) to 2 No. one bedroom flats (Class C3).
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Appeal B Ref: APP/Z5630/W/17/3180622

Building to the rear of 402-404 Ewell Road, London KT6 7HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class M of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Cormac Dolan, Redtree Ventures, against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 17/10223/PNRR, dated 23 May 2017, was refused by notice dated 21 July 2017.
 - The development proposed is to convert the existing retail building into 2 x 1bp units.
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Decision

Appeal A

1. The appeal is allowed and approval granted under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use from financial and professional services (Class A2) to 2 No. one bedroom flats (Class C3) at the building to the rear of 402-404 Ewell Road, London KT6 7HF in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph W(12) of the GPDO.

Appeal B

2. The appeal is dismissed.

Application for costs

3. An application for costs has been made by Redtree Ventures, against the Council of the Royal Borough of Kingston-upon-Thames in respect of Appeal A. This application is the subject of a separate Decision.

Preliminary Matters

4. For Appeal A, I have taken the description of development from the Council's decision notice as this more clearly describes the nature of the proposal than that set out in the covering letter supporting the application.

Main Issues

5. The main issues for both appeals are:
 - whether or not the development is permitted development under Schedule 2, Part 3, Class M of the GPDO; and
 - if it is, whether the development would be acceptable in terms of its transport and highway effects.

Reasons

6. Class M of the GPDO permits a change of use from a use falling within Class A2 (financial and professional services) to a use falling within Class C3 (dwellinghouses), and building operations reasonably necessary to convert the building to such a use. Paragraph M.1 (a) – (g) sets out the relevant exceptions and limitations of the permitted development right.

Appeal A

7. The Council's concerns relate to the limitations of paragraphs M.1(a) and (C). The Council's delegated report does not raise issue with the remaining limitations and based on the evidence before me and my observations on site, I find no reason to do so.

M.1(a)

8. Paragraph M.1(a) states that development is not permitted by Class M if the building was not used for one of the uses referred to in Class M(a) 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.
9. The appeal relates to a single storey, pitched roof building to the rear of a mid-terrace commercial building fronting onto Ewell Road. The appellant states that the commercial building was a former bank and that the appeal building was used as an ancillary store in conjunction with the main use.
10. In support of the appeal I have noted the direct debit confirmation for Council Tax or Business Rates and the National Non Domestic Rate Demand Notice 2016/2017, which relate to No 402-404. However, there is nothing contained within these documents which specifically link them to the appeal building. Moreover, they are dated October 2016 and therefore do not assist in respect of the above key dates.
11. The VOA Business Rates Valuation does refer to ground level external storage and the highlighted area is about the same as the additional floor space now

sought. Given that I saw no other external storage area at the site, I am satisfied that the reference relates to the appeal building. The special category code applied is also that of Banks/Insurance/Building Society Offices and other A2 Uses. However, the valuation is with effect from 1 April 2010. Therefore, there remains the possibility that the building could have been put to a different use between this date and 20 March 2013. However, the appellant has subsequently provided a lease agreement with Lloyds TSB Bank plc dated 18 April 2013, which includes the appeal building as part of the property. Street View photographs are also provided showing the bank operating at No 402 to 404 in May 2012 and July 2014. On the basis of this additional evidence and the absence of any evidence to the contrary, I am persuaded that no intervening change of use took place between 2010 and 2013.

12. Therefore, on the basis of the evidence before me and my observations on site, I am satisfied that the appeal building was used as part of the Class A2 use on 20 March 2013. Accordingly, the proposal would fall within the limitations of M.1(a).

M.1(c)

13. Paragraph M.1(C) states that development is not permitted by Class M if the cumulative floor space of the existing building changing use under Class M exceeds 150m². "Building" is defined in the GPDO as including any structure or erection and including any part of the building. "Floor space" means the total floor space in a building or buildings.
14. The Council state that the application site has previously benefited from permitted development under Class M to the front of the site which converted 141m² of Class A2 floor space into residential accommodation and that the 52m² now proposed would cumulatively exceed the 150m² limitation. However, the application site in this case does not include the main building at the front of the site, which is separate to the appeal building. Moreover, the limitation specifically refers to the existing building changing use, which in this case is the building which the Council state has a floor space of 52m².
15. I am therefore satisfied that the appeal proposal would not breach the limitations of M.1(c).

Conclusion on permitted development

16. For the above reasons I conclude that the development is permitted development under Schedule 2, Part 3, Class M of the GPDO.

Paragraph W(11)

17. Paragraph W(11)(c) states that the development must not begin before the occurrence of the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.
18. In this case, the Council has confirmed that it did not determine the application within the 56 day statutory period. Accordingly, as I have found that the proposal benefits from the permitted development rights conferred by Class M, permission has been deemed to be granted and the appellant can proceed with the development.

19. Therefore, it is not necessary or appropriate that I consider whether prior approval is required for the matters set out in paragraph M.2(1), including whether the development would be acceptable in terms of its transport and highway effects.

Appeal B

20. The Council's first reason for refusal is that insufficient information was provided to enable it to establish whether the proposed development complies with the conditions, limitations, or restrictions specified in Schedule 2, Part 3, Class M of the GPDO, in conflict with paragraph W3(b) of the same.
21. In this regard, the Council's delegated report states that the applicant provided no evidence to support the assertion that the building was in Class A2 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. This reflects the limitations of Paragraph M.1(a).
22. In response to evidence submitted in support of the appeal, the Council consider that this concern has been resolved. However, for the reasons explained above, I am not persuaded that that the proposal would fall within the limitations of paragraph M.1(a) on the basis of the National Non Domestic Rate Demand Notice 2016/2017 and direct debit confirmation and VOA Business Rates Valuation.
23. It will be evident that I have come to a different view on this limitation for Appeal A. This is because each appeal must be considered as a separate entity and for Appeal A, additional information was submitted, including a lease agreement and street view photographs. This information, in combination with the VOA Business Rates Valuation, was key to my conclusion that the proposal would fall within the limitations of M.1(a). This additional information was not submitted in support of Appeal B and I have therefore been unable to take it into account in my determination of the same.
24. I am mindful that the appellant may have not submitted this information as the Council had essentially conceded its position on this matter. I have therefore considered, in the interest of natural justice, whether I should revert back to the parties on this matter. However, this would have unnecessarily delayed my decision as the appellant is in receipt of approval under Appeal A, which is essentially the same as the proposal for Appeal B. As such, the appellant has not been prejudiced.
25. The Council remain concerned that the appellant has not provided plans or elevations of the existing building and so it cannot be determined if the proposal would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. If this were the case, the proposal would fail to meet the limitations of paragraph M.1(e).
26. In rebuttal to the Council's statement, the appellant has provided existing plans of the building. Based on these plans and the proposed plans, I am satisfied that there would be no such enlargement and thus the limitations of paragraph M.1(e) would not be breached.
27. Nevertheless, I have not found that the proposal would not meet the limitations of paragraph M.1(a) and as such does not benefit from the permission granted

by Class M. It is not therefore necessary or appropriate for me to consider the various criteria set out in paragraph M.2.

Conclusion

Appeal A

28. For the reasons given above, I conclude that the appeal should be allowed and approval granted. In granting approval the appellant should note that the GPDO requires at Paragraph M.2(3) that the development must be completed within a period of 3 years from the date that the prior approval is granted and that the building which has changed use can only be used as a dwellinghouse and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such as a dwellinghouse. Paragraph W(12)(b) of the GPDO requires that the development is carried out in accordance with the details provided in the application.

Appeal B

29. For the reasons given above, I conclude that the proposal is not permitted development and that the appeal should not succeed.

Richard S Jones

INSPECTOR