



Appeal Decision

Site visit made on 25 June 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 July 2019

Appeal Ref: APP/C5690/W/19/3224472

166 Hither Green Lane, London SE13 6QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class M of The Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr A Arif against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/18/108910, dated 2 August 2018, was refused by notice dated 20 December 2018.
 - The development proposed was originally described as '*conversion of ground floor shop into C3 residential self-contained flat*'.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of the Class A1 unit at ground floor level to Use Class C3 (residential) to provide 1 three bedroom self-contained flat together with alterations to the shop front elevation of 166 Hither Green Lane, London SE13 6QA in accordance with the terms of the application Ref DC/18/108910, dated 2 August 2018 and the details submitted with it including drawing no: LP/0011/APP/03, pursuant to Article 3(1) and Schedule 2, Part 1, Class M, paragraph M.2(3) and subject to the following condition:-

1) Notwithstanding paragraph W(12) (a) of the Town and Country Planning (General Permitted Development) (England) Order 2015, no development shall commence until plans showing the front elevation of the property including full details of windows, doors and materials to be used have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Preliminary Matters

2. At the site visit I was unable to see the internal parts of the retail unit due to an issue with keys not being available to allow access into the shop. However, given the main issues below I do not consider that this prejudiced my consideration of this appeal.
3. The Council did not submit a Statement of Case and no third-party representations, in relation to the appeal, were received. As such, there were no items for the appellant to make final comments on and no new evidence is allowed at that stage. As such, the evidence submitted by the appellant at that

stage was returned and I have not taken it into account in the determination of this appeal.

4. In the interests of clarity and precision, the description of development used in the formal decision above has been taken from the appeal form removing superfluous words.

Application for costs

5. An application for costs was made by Mr Arif against the Council of the London Borough of Lewisham. This application is the subject of a separate decision.

Background and Main Issues

6. Schedule 2, Part 3, Class M of the GPDO permits the change of use of a building from a use falling within Class A1 (shops), Class A2 (financial and professional services), Class A5 (hot food takeaways) and some sui-generis uses to a use falling within Class C3 (dwellinghouses), along with building operations reasonably necessary to convert the building.
7. There is no dispute that the proposal meets the requirements of Paragraph M.1 of the GPDO and so is permitted development under Class M, subject to the prior approval of certain matters. For permitted development under Class M(a) and M(b), Paragraph M.2(1) of the GPDO requires prior approval of 5 matters. These are: (a) the transport and highways impacts of the development; (b) contamination risks; (c) flooding risks; (d) whether it is undesirable for the building to change to a use falling within Class C3 because of the impact on adequate provision of services, or on the sustainability of a key shopping area (but only where there is a reasonable prospect of the building being used to provide such services); and (e) the design or external appearance of the building.
8. On the basis of the evidence submitted and the Council's reasons for refusal, the main issues in this case are:
 - Whether it would be undesirable for the Class A1 (shops) unit to change to a use falling within class C3 (dwellinghouses) having regard to the provisions of paragraph M.2(1)(d)(i) of schedule 2, Part 3, class M of the GPDO.
 - The design or external appearance of the building.

Reasons

Whether the change of use is undesirable

9. The GPDO makes it clear that the impact of the change of use on the adequate provision of retail services may only be considered where there is a reasonable prospect of the building being used to provide such services.
10. The appeal site comprises a 2-storey end of terrace building with a vacant dry cleaner's unit on the ground floor and residential flats above. The unit falls at one end of a parade of commercial uses on a busy road and there are residential properties adjacent to this terrace. The attached properties in the terrace are a mix of commercial and residential units at ground floor level. The parade of commercial units continues to the south of the junction of Hither

Green Lane with Lanier Road and it contains a variety of commercial uses and appears to be relatively vibrant.

11. The evidence before me in relation to the vacancy of the unit is not clear as within separate documents it is stated that the unit ceased trading in 2016 and that the unit has been vacant since December 2017. Nevertheless, the evidence before me indicates that the dry-cleaning business was marketed from October 2014 for 18 months. It is clear that a reasonable amount of marketing has taken place in relation to that business.
12. However, there is little evidence before me to indicate that all possible efforts have been made to attract a tenant or purchaser for an alternative retail use. Moreover, at the time of my site visit, at around 10.00, the area was busy with pedestrians and cars and Hither Green Lane is also a bus route. While I note the prolonged period of vacancy at the site, the other dry-cleaner unit within the parade and the limited parking provision in light of a lack of robust evidence, I cannot conclude that there is not a reasonable prospect of the building being used to provide such retail services. Therefore, I must consider the impact of the change of use upon the adequate provision of such services.
13. I have little evidence from either party on this issue. However, I observed that the site is at one end of this part of the commercial parade on Hither Green Lane. There is only one other commercial unit in the terrace that the unit is located within. As such, it appears that the unit is in a peripheral location within this parade. I noted that the commercial character strengthens towards the southern part of the parade which has a relatively thriving retail character with few vacant units. The site has not made a contribution to retail provision for a prolonged period. The proximity of the other commercial units within the parade would mean that there would remain ample provision of services both within the immediate area around the appeal site and within walking distance.
14. Because of this, I conclude that the change of use would not have an adverse impact upon the adequate provision of retail services. I find no conflict with Paragraph 92 (c) of the Framework which indicates that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs. Given that there are plenty of shops nearby I find no particular conflict with Paragraph 92 (d) which indicates that established shops, facilities and services are able to develop and modernise and are retained for the benefit of the community.

Design or external appearance

15. External changes to the fenestration of the building are proposed. However, no elevational details were submitted with the application. Where those fenestration details relate to the internal parts and rear of the building the changes would have little impact on the streetscape of Hither Green Lane. The design and access statement indicates that the shopfront would be removed and three 'sash' windows, similar in appearance to that within the residential properties at ground floor level at the opposite end of the terrace, would be installed. The materials to be used around the window openings would either be brick work or render.
16. Given that a large proportion of the existing terrace has been altered in a similar way to that proposed, to insert 3 'sash' windows in the front elevation

would not appear incongruous in relation to this small part of the parade. However, the pilasters and cornice of the shopfront could be retained to assist in retaining some of the inherent commercial character of this unit. These works can be controlled by the imposition of a condition and this would ensure any harm is mitigated.

Conditions

17. I have considered the Council's suggested conditions in accordance with the Planning Practice Guidance. Condition M.2(3) to class M states (a) that development permitted under class M must be completed within a period of 3 years starting with the prior approval date, and (b) that the building that has changed use is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Class Order and for no other purpose. Paragraph W(12) (a) of the GPDO requires that the development is carried out in accordance with the details approved by the local planning authority.
18. Therefore, I have not imposed the Council's suggested conditions 2 and 3. I have imposed a condition in relation to the details of the front elevation as this directly relates to the external appearance of the building and is necessary in the interests of character and appearance of the area. I have amended the wording of that condition in the interests of enforceability.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed and approval granted.

D. Boffin

INSPECTOR