



Appeal Decision

Site visit made on 18 June 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2019

Appeal Ref: APP/Q5300/W/19/3226046 20 Downs Road, Enfield EN1 1PB

- 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 John O'Sullivan against the decision of the Council of the London Borough of Enfield.
 - The application Ref 18/04492/PIA, dated 16 November 2018, was refused by notice dated 17 January 2019.
 - The development proposed is a change of use of outbuilding to rear from retail (Class A1) to 1 x 1-bed self-contained flat (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address provided within the submitted application form does not include the Borough in which the appeal site is located (Enfield). However, this is shown in the address for the site within the appeal form and the Council's decision notice. I have therefore included this within the heading above for the sake of clarity.
3. Although reference is made to the submitted Planning Statement, no description of development is given within the application form. However, this is given as the 'change of use of outbuilding to rear from retail (Class A1) to 1 x 1-bed self-contained flat (Class C3)' within both the Council's decision notice and the appeal form. I have therefore used this description in the heading above.
4. Since the application was submitted there has been amendments made to The Town and Country Planning (General Permitted Development) (England) Order 2015¹ (GPDO). However, as I can identify no changes to the elements of Schedule 2, Part 3 Class M of the GPDO (henceforth referred to as Class M) which materially alter their bearing on the issues in this appeal, neither party has been prejudiced by my consideration of the revised GPDO.

Main Issues

5. Class M permits a change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order to a use falling within Class

¹ 2019 No. 907

C3 (dwellinghouses) of that Schedule. Relevant to this appeal, paragraph M.1(a) of Class M also states that development is not permitted if the building was not used for a use falling within Class A1 i) on 20 March 2013; or, ii) 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.

6. The Council does not accept that the outbuilding (the building that is the subject of this appeal) constitutes an A1 unit. It also has substantive concerns regarding transport and highways impacts of the development. This is one of the conditions which must be met under M.2-(1) of Class A.
7. The main issues are therefore:
 - whether the proposal would be permitted development under Class M, with particular regard to whether the appeal building has an existing A1 use and meets the requirements of M.1(a) (i) and (ii); and
 - if so, whether or not prior approval is required with regard to the transport and highways impact of the proposal.

Reasons

Retail Use

8. The appeal site accommodates an outbuilding within the rear yard of a two storey building which originally had a shop at ground floor level. I henceforth refer to this two storey building as the 'main building'.
9. This proposal follows a prior approval scheme² which was for the change of use of both the main building and outbuilding from A1 use to residential use. This scheme was refused by the Council and subsequently dismissed at appeal³. However, during the determination of this appeal, the Council gave prior approval⁴ at the main building for a change of use at ground floor level from A1 use to two self-contained dwellinghouses. Consequently, the appeal proposal seeks only to convert the outbuilding to a one-bedroom flat under the provisions of Class M.
10. I note that the appellant has submitted evidence which includes an affidavit showing that the outbuilding was used continuously for retail storage purposes between December 2008 and May 2017. Furthermore, the Council's Officer report states that it provided a storage function ancillary to the adjacent A1 unit and, in my view, it falls within the curtilage of the main building. From the evidence before me, and on the balance of probability, I am therefore satisfied that the outbuilding was ancillary to the retail use at the main building on 20 March 2013.
11. Nonetheless, to comply with limitation M(a) (i) of Class M, the outbuilding must have a current A1 use. To my mind, an ancillary A1 use would meet this requirement. However, it does not appear as though such a use could exist without the A1 use of the main building. It therefore seems to me that a current A1 use of the outbuilding is dependent on there being an existing A1 use at the main building. I now proceed to consider this matter.

² 17/03492/PIA

³ APP/Q5300/W/17/3190678

⁴ 17/05313/PIA

12. The giving of prior approval in itself at the main building would not result in the loss of the A1 use. However, I saw on site that this prior approval has been implemented. The signage for the original shop appeared to have been removed and internal works to facilitate the conversion were well underway. Consequently, the on-going conversion has changed the character of the site so that the A1 use at the main building is no longer perceptible. In my view, this has started a new chapter in the planning history of the main building, in which its former A1 use has been lost. It therefore follows that the outbuilding cannot have an ancillary A1 use and fails to comply with limitation M(a) (i) of Class M.
13. Under paragraph Schedule 2, Part 3, Paragraph W. (3) of the GPDO, an application may be refused where the developer has provided insufficient information to enable it to be established whether the proposed development complies with any conditions, limitations or restrictions as may be applicable to the development in question. Taking everything together, I am not satisfied that the proposal would meet the limitations of Class M and prior approval should therefore not be given.

Prior Approval

14. Given my conclusion in relation to the first main issue, there is no need for me to consider compliance with the conditions at M.2-(1) of Class M as it would not alter the outcome of the appeal.

Conclusion

15. For the reasons set out above, I am not satisfied that the proposal would meet the requirements of Class M. I therefore conclude that the proposal would not be permitted development under the provisions of this Class and that the appeal should be dismissed.

M Heron

INSPECTOR