



Appeal Decision

Site visit made on 29 August 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/Y1945/W/19/3231016

172 Whippendell Road, Watford, Hertfordshire WD18 7NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a 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 Younis Shah against the decision of Watford Borough Council.
 - The application Ref 19/00136/MAPD, dated 4 February 2019, was granted approval by notice dated 6 March 2019.
 - The development proposed is notification for prior approval for the change of use of the rear section of the shop from retail (A1) to residential (C3) and associated building works.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class M of the Town & Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO') for the change of use from A1 (retail) to C3 (residential) at 172 Whippendell Road, Watford, Hertfordshire WD18 7NA in accordance with the details submitted pursuant to Schedule 2, Part 3, Class M of the GPDO.

Application for costs

2. An application for costs was made by Mr Younis Shah against Watford Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The description in the banner heading is taken from the application form, but I have shortened it to remove those elements that are not a description of development. Notwithstanding this, I have used the description of the proposal from the Council's decision notice. It adequately and simply describes the proposed development instead of the more detailed description given on the application form.
4. There is some dispute between the parties as to whether a previously approved planning application¹ has been implemented for a single storey rear extension to provide one new living unit. The submitted prior approval plans show the approved extension beyond the two storey outrigger and the three store buildings extending up to the rear plot boundary, that would need to be demolished to make way for the extension.

¹ LPA ref:15/00310/FUL

5. In its officer report (which is also its Statement) the Council say the planning permission has expired. However, the appellant claims that works have commenced with the demolition of the outbuildings and that the extension foundations have been excavated and concreted in. The Council has not submitted any subsequent documentation or evidence to the contrary to make me doubt this.
6. Notwithstanding that, as clarified in the appellant's appeal statement, the prior approval application was to convert part of the existing shop into a residential unit. It follows that, regardless of the status of the extension works (which houses residential accommodation), the prior approval application does not relate to the single storey rear extension which was the subject of the previous planning application.

Main Issues

7. The main issues are:

- Whether the proposal would be permitted development under Schedule 2, Part 3, Class M of the GPDO, and
- If it is permitted development, whether prior approval should be granted.

Reasons

Permitted development

8. Class M of the GPDO permits a change of use from a Class A1 (shops) to a use falling within Class C3 (dwellinghouse), and building operations reasonably necessary to convert the building to such a use, subject to a range of criteria in Class M.1 and to conditions under Class M.2. It is criteria M.1(e) and M.1(f) which are in dispute.
9. 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. The Council has not specified which parts of the proposal contravene this criterion. Given the scope of the appeal notification, it is the rear shop and staff area which would be altered with internal walls taken down to become the living/kitchen area and shower room. Therefore, the building would not be extended beyond its current footprint, and I can only conclude that the proposal would accord with the provisions of criterion M.1(e).
10. Criterion M.1(f) specifies that development should not consist of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouse)). Internal walls between the 'shop' and 'staff' areas would be removed as would a mono-pitched polycarbonate roof that currently infills the side yard between the side boundary wall and 'shop and staff' area. This would in my view be 'reasonably necessary' demolition.
11. Part W(11) requires that work must not begin before the appellant has received written notification from the Council. The prior approval proposal does not require the demolition of any outriggers or buildings. As noted above, any demolition of these outbuildings that has already taken place as part of the already approved application falls outside the scope of the prior approval. It

therefore follows that the prior approval application cannot be refused for the demolition works that have been carried out for a different scheme under a previous planning permission.

12. Taking all of the above into account, I find the proposal complies with criteria M.1(e) and M.1(f). Therefore, I conclude that the proposal is development permitted under Schedule 2, Part 3, Class M of the GPDO.

Prior Approval

13. As the proposal is permitted development I now turn to whether prior approval of the Council would be required with regards to the conditions in Class M.2 relating particularly to transport and highways impacts, and design or external appearance.
14. I observed on my visit that parking in the area was limited and would be in demand as the site is within a Controlled Parking Zone whereby parking spaces are controlled by resident parking permits. The prior approval scheme would result in the creation of an extra 1-bedroom unit and would place an additional strain on the existing on-street parking spaces, which without being addressed would result in an unacceptable highway impact.
15. With that in mind, the appellant has completed a Unilateral Undertaking (UU) under section 106 of the Act² which would secure a financial payment of £2,000 towards the variation of the Borough of Watford (Controlled Parking Zones) (Consolidation) Order 2010 so that future residents of the development will not be entitled to a residents' parking permit in the vicinity of the site.
16. I consider that the agreement would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010) as amended as it would be necessary, relevant and fairly related to the proposed development. I therefore find that this resolves the issue and the proposal now accords with the transport and highways condition in Class M.2(a).
17. Turning to design or external appearance the Council has two issues: the size of the unit being small doubting it is a 'dwellinghouse', and the unit extending beyond the external dimensions of the existing building. I have already found that the proposal would not extend beyond the external dimensions of the existing building and therefore I turn to whether the unit is a dwellinghouse.
18. For the purposes of Part 3 of Schedule 2 of the GPDO a 'dwellinghouse' can be a building containing one or more flats, or a flat contained within such a building³. However, it does not stipulate a minimum floor area. I acknowledge that the proposed floor area of 24m² would be small⁴. However, the proposed unit would have a kitchen and living area, shower and WC and a bedroom and therefore would provide the necessary facilities for day-to-day living such as required for cooking, eating, washing and sleeping albeit in a restricted space. Therefore, I find it would constitute a 'dwellinghouse' as required by the GPDO. Furthermore, I note a previous Inspector came to a similar conclusion when

² The Town and Country Planning Act 1990

³ Interpretation of 'dwellinghouse' in the Town & Country Planning (General Permitted Development) (England) Order 2015

⁴ when compared to the DCLG: Technical housing standards – nationally described space standards (published March 2015) which stipulates the minimum gross internal floor area of 39m² for a 1bed 1 person unit.

determining an appeal at a nearby property⁵. I therefore find the proposal would accord with condition Class M.2(e).

Other Matters

19. I acknowledge that a number of nearby residents raise a series of other concerns about the proposal. However, given that the proposal before me is a prior approval application none of the matters raised provides for a compelling reason why such a prior approval should not be granted.

Conditions

20. Paragraph W(13) of the GPDO enables the grant of a prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has not suggested any conditions.
21. From the evidence before me, no conditions are required in relation to any of the matters which are subject to prior approval and therefore I have not imposed any.
22. For clarity, the development has to be carried out in accordance with approved plans to accord with the requirements of paragraph W(12)(b) of the GPDO.
23. The appellant is also reminded that in granting approval the GPDO requires the development to be completed within a period of 3 years from the date of this permission and that the (part of the) building which has changed use can only be used as a dwellinghouse and for no other purpose.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed.

K Stephens
INSPECTOR

⁵ Appeal ref: APP/Y1945/W/18/3197021 dated 29 June 2018.