



Appeal Decision

Site visit made on 1 October 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2019

Appeal Ref: APP/G5750/W/19/3233878

313 Barking Road, Plaistow, Newham, London E13 8EE

- 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 Schedule 2(3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Abraham Rumpler against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/01623/PRECOU, dated 11 June 2019, was refused by notice dated 23 July 2019.
 - The development proposed is change of use from retail (Use Class A1) to 1 no self-contained flat (Use Class C3).
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to a three-storey terrace property located on the eastern side of the A124 Barking Road. Barking Electrical Wholesalers (Use Class A1) currently occupies the ground floor premises with evidently a further five residential units (Use Class C3) located on the first and second floors.
3. The proposal is for the change of use of the rear part of the ground floor shop to a single, self-contained flat. The appeal is over the Council's decision that the change of use proposed is not permitted by the GPDO. The main issue is therefore whether the proposal is permitted under Class M of Schedule 2(3) of the GPDO and, if so, meets the conditions for prior approval.

Reasons

4. Class M permits a change of use of a building from a mixed use combining use as a dwellinghouse with a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses). The definition of a building in the GPDO, other than in specified classes excluding Part M, includes any part of same. Therefore, the Class M permitted development right is not precluded by the building continuing to be a mixed use, with the front part of the ground floor remaining a retail unit.
5. However, the proposal remains subject to the conditions set out in the following paragraph M.2 of the GPDO. This sets out the specific criteria for the granting of prior approval and to which the further provisions of Schedule 2(3) paragraph W also apply. Of these criteria, my concerns relate to (c) flooding risks in relation to the building and (e) the design and external appearance.

6. The property falls within Flood Zone 3 as shown on the Environment Agency flood maps. Regardless of the fact the area is subject to flood protection, the proposal would have required consultation with the Environment Agency and the provision of a site-specific flood risk assessment. Such an assessment has not been provided with the appeal. For this reason, the proposal fails this relevant condition for the granting of prior approval.
7. Regarding the matter of design and external appearance my attention has been drawn to a separate proposal for roof alterations to the wider terrace within which this building forms a part. This wider scheme has been the subject of a separate appeal¹ which has recently been dismissed. In the plans submitted with this other proposal the existing roof plan to No 313 shows a two-storey rear addition with butterfly pitched roof over part of the flat roof area shown as open in this current scheme and where roof lights to the self-contained flat are proposed. The publicly-available Google map satellite view of the rear of the property provides strong evidence that the rear of No 313 in actuality reflects that shown in the separate appeal proposal. As there was no one available to provide access to the rear of the property at my site visit, I was not able to verify the actual circumstances for myself.
8. Paragraph W of Schedule 2(3) of the GPDO requires that the application for prior approval must be accompanied by a written description of the proposed development, including any building or other operations, and a plan indicating the site and showing the proposed development. I have reasonable grounds to consider this requirement not to have been adequately met.
9. I gave consideration as to whether it would then be reasonable to seek clarification over the submitted drawings. However, this would not have altered the fact the requirement for a site-specific flood risk assessment had not been met. The appeal process is not primarily intended to progress proposals but to determine whether the Council had reasonable grounds for the original decision. The appellant has recourse to re-submitting a further proposal to the Council made in the light of my findings in this appeal decision.

Conclusion

10. For the reasons given, the conditions for granting prior approval for the development permitted under Class M of Schedule 2(3) of the GPDO have not been met. I conclude therefore that the appeal should be dismissed.

Jonathan Price

INSPECTOR

¹ Appeal Ref: APP/G5750/W/19/3230696 307, 309, 311, 313 & 315 Barking Road, Plaistow, London E13 8EE