



Appeal Decision

Site visit made on 11 November 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2019

Appeal Ref: APP/L5240/W/19/3236243

279 Lower Addiscombe Road, Croydon CR0 6RE

- 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 A Steinberg against the decision of the Council of the London Borough of Croydon.
 - The application Ref 19/01458/GPDO, dated 24 March 2019, was refused by notice dated 22 May 2019.
 - The development proposed is the change of use of part of the ground floor from Class A1/A2 (Retail/Financial/Professional) to Class C3 (dwellinghouse).
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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 (as amended) for the change of use of part of the ground floor from Class A1/A2 (Retail/Financial/Professional) to Class C3 (dwellinghouse) at 279 Lower Addiscombe Road, Croydon CR0 6RE in accordance with the terms of the application Ref 19/01458/GPDO, dated 24 March 2019, and the plans submitted with it including plans ref 6081/SK/001 Site/Block Plan, 6081/SK/011 existing elevations, 6081/SK/020 Proposed floor plans and 6081/SK/010 existing floor plans and the following condition:
 - 1) Details of the refuse storage area shall be submitted to, and approved by, the local planning authority prior to the commencement of use. The approved details shall then be implemented prior to the first occupation of the approved dwelling.

Procedural matters

2. I have taken the description of development from the Council's Decision Notice for clarity.
3. This appeal relates to Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Class M (a) permits development consisting of a change of use of a building from a use falling within Class A1 (shops), Class A2 (financial and professional services) or Class A5 (hot food takeaways) to a Class C3 use (dwellinghouse). This provision also includes, at (b) building operations reasonably necessary to convert the building.

4. Planning Practice Guidance advises that the schedule grants planning permission, subject to conditions and limitations to control impacts and protect local amenity. Paragraph M.1(a to g) places limitations on the permitted development right. There is no dispute between parties that the proposal would satisfy these limitations. No evidence has been submitted that would lead me to a different conclusion.
5. However, provision M.2(1) requires a developer to apply to the local planning authority to determine whether its prior approval is required in regard to potential effects listed at (a) to (e). The contention between main parties is whether the proposal satisfies the conditions of prior approval set out by paragraphs M.2(1)(d)(i) and (ii) of the GPDO. Paragraph (d) relates to whether it would be undesirable for the building to change use; (i) on adequate provision of a building falling within Class A1, A2 or A5 use, but only where there is a reasonable prospect of the building to provide such services, or (ii) its impact on the sustainability of the shopping area if within a key shopping area.

Planning Policy

6. The provisions of Schedule 2, Class M of the GPDO do not require decisions to be determined in accordance with the development plan. Therefore, a prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied; the principle of development is established through the grant of permission by the Order. I have therefore had regard to the policies of the development plan and the National Planning Policy Framework (Framework) only in so far as where they are material considerations. The development plan for the district includes the Croydon Local Plan 2018 (LP) and the London Plan 2016.

Main Issue

7. The main issue is whether the proposal would be permitted development, with respect to the effect on the sustainability of the shopping area.

Reasons

8. The site the subject of this appeal is part of a ground floor retail premises within the Addiscombe District Centre. The property consists of the retail units of 279 and 279A Lower Addiscombe Road. No 279A is currently vacant, whereas 279 appears to operate as a hairdresser/beauty salon. The appeal site consists of a group of rooms to the rear of the retail units. The smaller room is currently a kitchen. The larger space, to the rear, appears to be a store or living space with large glass doors opening onto a garden. The frontage retail function does not seem to be contingent on access to the rear space.
9. The proposal would create a ground floor one-bedroom flat with side access to an under-croft passageway and rear access to the garden.
10. I have considered the issue of the reasonable prospect of the site being used for Class A1, A2 or A5 use. On my visit I observed that the rooms appear to have been separated from the frontage unit of No 279 and are unused. There is no evidence before me that contests this assertion. I therefore do not find there exists a reasonable prospect that the rooms to the rear would be likely or necessary to support the retained frontage retail unit. The retained units are

relatively small, but this appears to be a long-standing situation and would be unaffected by the proposal. Furthermore, a 5-year lease has recently been entered into for this relatively small unit¹. The proposal would not therefore worsen the ability of the units to attract future occupiers and would subsequently not have an impact on the provision of services currently offered. As such, the proposal would comply with schedule 2, part 3, class M.2(1)(d)(i) of the GPDO.

11. Provision M.2(1)(d)(ii) of the GPDO, requires consideration of the effect of the change of use on the sustainability of the shopping area.
12. The site is within the district centre, as defined by policy SP3.6 of the LP. The GPDO identifies that Class M development must consider the effect of the proposal on the sustainability of the shopping parade if within a key shopping area. The Council's Statement of Case explains that paragraph 5.39 of the LP defines the site as being within a key shopping area and that any proposed change of use from retail to residential would require planning permission. Although the Council's intentions are laudable, an article 4 direction has not been made to prevent Class M being engaged. The approach of paragraph 5.39 would set aside the requirement to firstly determine whether the proposal would affect the sustainability of the shopping parade.
13. The proposal would retain the frontage retail function, being located to the rear of the ground floor. It would therefore also maintain the existing shopfront and the size of unit currently trading. Furthermore, the local centre displays a limited number of vacant units, reinforcing its vibrancy. As such, the sustainability of the centre would be unlikely to be materially affected by the proposal. Therefore, the proposed change of use would have only a negligible or even neutral effect on the sustainability of the shopping parade. Subsequently, the proposal would also comply with schedule 2, part 3, class M.2(1)(d)(ii) of the GPDO.
14. Insofar as they are material considerations, I have had regard to policies SP3.6, DM4.1 and DM4.2 of the LP, which define the centre and seek to maintain its vitality and frontages. I have also had regard to policy 2.15 of the London Plan 2016 that seeks to sustain the vitality of town centres.

Other matters

15. I have had regard to an appeal decision at 285 Portland Road² (No 285). In that case the Inspector determined that the parade had several vacant units, that there was little demand for the appeal property and the unit was on the fringe of the centre. The Inspector concluded that the proposal would not impact the provision of services and complied with M.2.(1)(d)(i). Although I take the Council's point that No 285 was not within a District Centre, it is germane that the proposal was not one that Section 38(6) strictly applied; seeking prior notification. The GPDO affords permitted development rights to the property and the development plan informs this decision as a material consideration only.
16. I have noted representations received by the Council following consultation on the application. However, the matters raised by the resident in regard to the

¹ Lease Agreement for 279 Lower Addiscombe Road 30 October 2019

² Planning Appeal Reference: APP/L5240/W/17/3187705

effect on and provision of utilities, are not material in the consideration of the conditions and limitations associated with Class M of the GPDO.

Conditions

17. The Council has suggested 5 conditions. These relate to details of materials, refuse store, water usage target, approved plans and commencement period. Paragraph W(13) of the GPDO allows that prior approvals may be granted subject to conditions reasonably related to the subject matter. As such, I have considered the use of the Council's suggested conditions. I have included the condition relating to the provision of a covered refuse storage in the interests of the character and appearance of the area. Conversely, based on the evidence before me, I am unconvinced that conditions relating to water usage or materials would meet the tests set out in the Planning Practice Guidance. Also, paragraph W(12)(a) requires the development to be carried out in accordance with the details provided, therefore such a condition would not be necessary.
18. Furthermore, any planning permission, granted under the provisions of Class M, would be subject to the conditions set out in paragraphs M.2(3) (a) and (b). These specify that the development must be completed within 3 years of the prior approval being granted and that the development shall be used only as a dwellinghouse within the meaning of a Class C3 use, except for other purposes ancillary to the primary use.

Conclusion

19. For the above reasons the appeal is allowed, and approval granted.

Ben Plenty

INSPECTOR