
Appeal Decision

Site visit made on 19 November 2019

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/X5210/W/19/3234806

387 Kentish Town Road, London NW5 2TJ

- 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 (as amended).
 - The appeal is made by Kingstone Property Kentish Town Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2019/1239/P, dated 5 March 2019, was refused by notice dated 26 April 2019.
 - The development proposed is a change of use of the ground floor unit from retail (Class A1) to form a 2bed 4person dwelling (Class C3) together with building operations including replacement of shopfront with glazed screens and new front entrance door as well as the replacement of existing single storey rear extensions to include new windows and rooflights.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form did not include a description of development, so I have used the description from the Council's decision notice in the banner heading above.

Background and Main Issues

3. The application seeks prior approval for the change of use of a building from a shop (Class A1) to a dwellinghouse (Class C3), along with the building operations necessary to facilitate the change of use.
4. The Council accepts that the proposal meets the requirements of paragraph M.1 of the GPDO, and that therefore it constitutes Permitted Development under Class M. None of the evidence before me leads me to a different view.
5. However, permission under Class M is also conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval will be required in respect of the matters referred to in paragraph M.2(1)(a to e). The matters in dispute relate, in the order they were presented on the Council's decision notice, to criteria (d) and (a) which deal with the impacts of the development on retail provision and sustainability, and on transport and highways. No concerns were raised in respect of

contamination risks, flooding risks, or the design or external appearance of the development.

6. I therefore consider the main issues to be:

- Whether it would be undesirable for the building to change to a use as a dwellinghouse having regard to the effect on the sustainability of the shopping area and the prospects of the unit continuing to be used as an A1 shop, or on the sustainability of a key shopping area; and
- Whether the transport and highways impacts of the change of use would be acceptable, with particular reference to car parking.

Reasons

7. The application relates to a ground floor unit, within a three-storey property at the end of a short terrace of five properties the ground floors of which are in A1, A3 and A5 uses. It sits on Kentish Town Road at its junction with Highgate Road and Fortress Road towards the northern end of Kentish Town town centre, and is typical of this part of the centre which is characterised by properties with retail and other commercial uses on the ground floor with flats above. The unit is vacant, but was most recently a hairdresser's shop.
8. I will deal first with criterion (ii) set out in paragraph M.2(1)(d) of the GPDO, which seeks to assess the desirability or otherwise of a change of use of the building due to its location within a key shopping area. These are not defined in the GPDO. The property is located within a secondary frontage within the town centre and the appellant contends that the unit should therefore not be treated as being within a key shopping area.
9. Kentish Town is one of six town centres within Camden which are focal points for retail uses meeting a greater than local need. The centre offers a wide range of goods and services and has good access by bus, rail and underground. It is also designated as a district centre within the London Plan, which is a further indication of the centre's significance. That the property itself is in a secondary frontage does not alter the status of the town centre as a whole. Taking all these points together, I conclude that the property is within a key shopping area for the purposes of Paragraph M.2(1)(d)(ii).
10. The appellant has provided some information about vacant units within the primary frontages of the town centre, and suggests that as there are more attractive vacant units elsewhere in the centre the sustainability of the centre would not be harmed by a change of use in this case. However, the number of vacant units identified does not represent a large proportion of the centre, and is not in itself indicative of a failing high street. Indeed, at the time of my site visit I observed that some of the units identified as vacant by the appellant had been brought back into use, which suggests that empty units are part and parcel of the regular turnover of businesses in a reasonably vibrant centre.
11. I note also the support given to retaining retail uses within secondary frontages in Policy TC2 of the 2017 Camden Local Plan (CLP) and Policies SW2 and SW3 of the 2016 Kentish Town Neighbourhood Plan (KTNP). These policies are not determinative in prior approval cases as Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply. However, they are relevant to the planning judgements to be made on the subject matter of the prior

approval, and to that extent therefore they are considerations of material relevance in determining the effect on the shopping area. The policies indicate that secondary frontages play an important part in the overall offer of retail centres. I accept that there is a greater proportion of vacant units within some of the secondary frontages within Kentish Town town centre, notably on Fortress Road to the north east of the property. However, in this case the other ground floor units in the block are active, and occupied by various Class A uses. Introducing a non-retail use and a non-active residential frontage into an established retail block would be likely to make the area less vibrant and commercially attractive. As a result, the proposal would begin to undermine the vitality, viability, character and function of the centre. It would have a harmful effect on the sustainability of the key shopping area, and it would therefore be undesirable for the property to change to a use as a dwellinghouse in the context of Paragraph M.2(1)(d)(ii).

12. I now turn to criterion (i) of paragraph M.2(1)(d), which indicates that a change to residential use may be undesirable because of its impact on the adequate provision of retail services, but only where there is a reasonable prospect of the building being used to provide such services.
13. I accept that there are several other hairdressers and beauty salons already operating nearby. However, the unit could also provide other services covered by Use Classes A1 or, as the appellant points out, A2. This would contribute to the overall provision of retail and related services in the town centre, and the large number of retail units in the centre does not in itself mean that any given unit can be lost without undermining the adequate provision of services in the centre as a whole. Units in secondary frontages offer opportunities for new businesses to come in and expand the offer in the centre. The loss of the unit to residential use would therefore be harmful to the adequate provision of retail services within the town centre. That there are vacant units elsewhere in the centre which could also be used does not indicate that they would necessarily be preferred by new operators. I note that no evidence has been provided to demonstrate what, if any, measures have been made to market the unit for retail uses, and I therefore cannot be certain that the unit could not operate successfully in the future. The proposal therefore fails to meet the tests set out in Paragraph M.2(1)(d)(i).
14. I turn finally to the transport and highways impacts of the proposed change of use. The property lies within a Controlled Parking Zone, where I understand from the Council's evidence that demand for parking permits outstrips supply. I also saw on my site visit that on-street car parking nearby is limited. The property is near to Kentish Town underground and railway station with many bus routes passing close by, and it therefore has excellent public transport connectivity.
15. The creation of a two-bedroom unit as proposed would potentially create an additional strain on the demand for car parking places, which without being addressed would represent an unacceptable highway impact.
16. The appellant has provided a completed Unilateral Undertaking which would remove the right of future occupiers to hold a Camden on-street parking permit except in limited circumstances. However, in other cases this approach has been found incompatible with section 106 of the Town and Country Planning Act 1990 or not to be 'reasonable' in the sense of the tests set out in the

National Planning Policy Framework, as to encumber the actions of an individual is not a restriction on the use of land or buildings. A bilateral agreement could enable the Council to deal with the matter through other provisions, for example by varying the operation of the controlled parking zones. However, no such agreement is before me.

17. I therefore find that the proposal's impact on the demand for parking is not resolved, and consequently it fails to meet the transport and highways condition in Paragraph M.2(1)(a).

Conclusion

18. The proposal does not comply with the transport and highways condition in Paragraph M.2.(1)(a) of the GPDO, or the retail conditions set out in Paragraph M.2(1)(d). As it is not wholly compliant with Class M of the GPDO it would therefore be a development for which an application for planning permission is required.
19. The appeal is therefore dismissed.

M Cryan

Inspector