
Appeal Decision

Site visit made on 7 January 2020

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/V5570/W/19/3239322

410 Hornsey Road (the part comprising the ground floor metal workshop), Islington, London N19 4EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class M of the Town and Country (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Michael Mervyn against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/1349/PRA, dated 17 June 2019, was refused by notice dated 5 August 2019.
 - The development proposed as described on the decision notice and appeal form is "prior approval application for the proposed change of use of a building from a shop (Class A1) to residential (C3) proposing 2 no. residential units at ground floor".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the site location is described on the planning notification form as "412 Hornsey Road Joinery Shop" the appellant has confirmed the address is No 410 Hornsey Road. It is clear from the plans and from what I saw at my site visit that the proposal relates only to that part of No 410 that comprises the Hornsey Metal Works. The glass shop, also called No 410, and the flats on the upper floors are not included within the appeal site. The Council considered the application in this way and I will consider the appeal likewise. For clarity I have described the site location in this way in the banner heading above.
3. I have used the description of development as set out above as this more completely and succinctly describes the proposal shown on the plans than the description set out on the notification form.

Background and Main Issue

4. Class M of Schedule 2 Part 3 of the Town & Country (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the change of use of a building and any land within its curtilage from a use falling within, amongst other things, Class A1 shops¹, defined as including the retail sale of goods and the display of goods for sale, to a use falling within Class 3 (dwelling houses)² subject to a number of conditions and

¹ As defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order)

² *ibid*

limitations. In accordance with Class M.2(i) the appellant applied for a determination as to whether the prior approval of the Council would be required in respect of the transport and highways impacts of the development; contamination and flooding risks in relation to the building; whether it is undesirable for the building to change to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order because of the impact of the change of use on the adequate provision of shops³; where the building is located in a key shopping area, the impact on the sustainability of that shopping area; and the impact on the design or external appearance of the building.

5. Whilst changes of use to residential under Class M would provide much needed housing, the prior approval process is only available where all the specified conditions are met. The main issue is whether or not the part of No 410 which is the subject of this appeal benefits from permitted development rights afforded under Class M of the GPDO.

Reasons

6. One of the conditions, at Class M.1.(a), is that development is not permitted by Class M if the building was not used for a use falling within Class A1 (shops) of the Schedule to the Use Classes Order – (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 use⁴.
7. The appeal site is described variously as being in use as a metal shop and a metal workshop. Paragraph 5.4 of the Statement of Case on behalf of the appellant indicates "... the current use of the site is a metal workshop which has existed beyond 2013." During my visit I was able to see that the property has a fascia sign giving the name "Hornsey Metal Works" with the description "Gates, Railings, Grills and Furniture" beneath and contains equipment and materials consistent with the manufacture/assembly of metal goods such as gates, railings etc and associated staff facilities. There was no apparent area for the retail sale of goods or any obvious display of goods for sale.
8. The evidence indicates that at one time there was a larger commercial unit at No 410 Hornsey Road but this was subdivided at ground floor level into a glass retail unit and a separate metal workshop (Paragraph 5.5 of the Statement of Case on behalf of the appellant). There is also a passage labelled "common area with shared access" on the block plan which appears to give access to the flats above.
9. It is not clear exactly when the sub-division took place but the Council states that street photography in June 2008 confirms the units operated separately at this time. I have seen no substantive evidence to indicate otherwise. In addition the Council advises that the appeal site is recorded in the VOA business's rates record as "workshop and premises". The Council indicates that the appeal site is identified in this record as Unit 1 and the glass shop at ground and basement level as Unit 2. The appellant has not disputed this point.
10. There is an extensive planning history recorded for No 410. However, much of this appears to relate to the glass shop and not to the metal workshop: for

³ It is not claimed that the premises were in use for A2 (financial and professional services), A5 (hot food takeaways) or betting office, pay day loan shop or laundrette

⁴ The proposal does not conflict with the other limitations at Paragraph M.1

example, planning Ref P2013/2496/FUL. None of the cited site history evidence leads me to conclude the site was in use as A1 shops, as defined in the Use Classes Order, for the purposes of this appeal.

11. Whether or not the appeal site and the glass shop share the same building number on Ordnance Survey and street maps does not override the fact that the units are physically sub divided; have separate site histories and uses; and separate business rates and addresses in the VOA record. Nor would a location within an identified planning policy area, such as a shopping frontage or Local Shopping Centre, conclusively confirm the use of a particular building, or any part thereof, for the purposes of the GPDO or the Use Classes Order.
12. Taking all the above into account I conclude that, on the balance of probabilities, the appeal site was not in use as Class A1 shops on 20 March 2013. Accordingly, the condition set out at Class M.1.(a) is not met. I conclude that the appeal site does not benefit from the permitted development rights afforded under Class M of the GPDO.
13. Prior approval has been granted for conversion to residential⁵ at other premises but in the examples given the properties were previously in uses that the Council considered satisfied the conditions of Class M. Accordingly they lead me to no different conclusion in respect of this appeal proposal.
14. As I have concluded the proposal does not benefit from the Class M permitted development rights it is not necessary for me to consider whether prior approval is required or should be granted.

Conclusions

15. For the reasons set out above the appeal is dismissed.

S Harley

INSPECTOR

⁵ P2018/3516/PRA (the glass shop at No 410); P2018/2263/PRA; P2017/2797/PRA