



Appeal Decision

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2020

Appeal Ref: APP/X5990/W/18/3195869

45 Elgin Avenue, Westminster, London W9 3PP

- 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 Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Happykeep Ltd against the decision of City of Westminster Council.
 - The application Ref 17/08909/PIAPA, dated 5 October 2017, was refused by notice dated 23 November 2017.
 - The development proposed is a change of use from Class A1 (shops) to Class C3 (dwellinghouses) and associated alterations.
 - This decision supersedes that issued on 5 September 2018. That decision on the appeal was quashed by order of the High Court.
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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 from Class A1 (shops) to Class C3 (dwellinghouses) and associated alterations at 45 Elgin Avenue, Westminster, London W9 3PP in accordance with the terms of the application Ref 17/08909/PIAPA, dated 5 October 2017, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Plan – 45 Elgin Avenue; Darmody Architecture Architectural Statement October 2017.
 - 2) Demolition or construction works shall take place only between 08:00 and 17:00 on Monday to Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.

Preliminary Matters

2. In addition to this appeal, I have considered appeals for the same development proposal at three other shop units in this parade – Nos 47, 53 and 55 Elgin Avenue¹.
3. Following a review of the submitted evidence, I am satisfied that these appeals could each be determined without the need for a site visit. I sought the views of the main parties and no objections to this approach were raised.

¹ Appeal Refs: APP/X5990/W/18/3195873; APP/X5990/W/18/3195879; and APP/X5990/W/18/3195880.

Main Issue

4. The main issue is the effect of the proposed development on retail service provision in the area.

Reasons

5. The appeal property is within a building which contains a parade of seven shop units² at ground floor and basement level, with flats above. The building is located at the intersection of Elgin Avenue and Chippenham Road, where a number of retail and community services are to be found.
6. However, this area has no formal designation within the retail hierarchy of Westminster. Furthermore, it is not disputed that the appeal property is located in close proximity to four designated centres: Harrow Road District Centre to the west; and the lower order Local Centres at Shirland Road / Chippenham Road to the north, Shirland Road Junction to the east and Harrow Road East to the south.
7. Some time has elapsed since the appeals for the four shop units were made. It is not disputed that when the appeals were made, at least three of the seven shop units in the parade were vacant, including the appeal property and No 53, and another was used for a non-retail purpose. The appellant states that since this time, further vacancies have occurred both in the parade and elsewhere in the local area. Some evidence has been provided to show that some businesses in the parade have struggled financially, although I note that the pharmacy at 47 Elgin Avenue continues to operate.
8. I note the local support for retaining the four appeal shop units, including for the services they are said to provide to the local community, for the activity they generate and their contribution towards the viability of other nearby businesses.
9. I also note that local shops are said to be particularly important for elderly or disabled people that live nearby. However, very little substantive evidence has been provided with regard to these elderly or disabled residents, including whether they would be unable, or significantly less able to travel to one of the four designated shopping centres nearby to meet their needs.
10. In any event, whilst an undesignated cluster of retail service units can be beneficial for a local community, particularly in terms of convenience shopping, there are only a limited range and number of retail services at the intersection of Elgin Avenue and Chippenham Road and a number of vacant units.
11. As such it is unlikely that any local resident would be able to meet their day-to-day shopping needs from the retail services to be found at this location. The four designated shopping centres have a greater scale and choice of retail services and are located nearby; I also note that there are bus stops in the immediate area of the site, including one directly outside the appeal parade.
12. The presence of these four designated shopping centres nearby means that the loss of this vacant shop unit, or the other three units in the parade that are subject to the aforementioned appeals, would not significantly affect the provision of retail services in this part of Westminster.
13. Furthermore, the absence of a formal designation for the Elgin Avenue / Chippenham Road intersection; the vacancy levels and limited range of retail

² No 51 is no longer used as a shop but as a place of worship/community centre.

services to be found there; and the presence of the four designated shopping centres nearby, means that in my view, this would not be a *key shopping area* as referenced in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO)³.

14. I have had regard to the National Planning Policy Framework 2019 (the Framework) in so far as it is relevant to the subject matter of the appeal⁴. Paragraphs 92(c) and 92(d) of the Framework concern '...the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs'; and, '...that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community'. I find that the loss of a shop unit that has been vacant for several years, and which is located close to designated shopping centres, would not conflict with the Framework.
15. For these reasons, the proposed development would not adversely affect retail service provision in the area.

Other Matters

16. The Council's decision notice includes reference to conflicts between the proposal and policies in the development plan. A prior approval development 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 GPDO. I have not, therefore, had determinative regard to the development plan policies referenced by the Council.

Conditions and Conclusion

17. In determining this appeal I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
18. From the submitted evidence, I am satisfied that my decision would not adversely affect persons with a protected characteristic for the purposes of the PSED.
19. I have considered the Council's suggested conditions in light of Government guidance. A condition specifying approved drawings would be necessary for reasons of certainty; a condition specifying the hours of construction / demolition would be necessary to protect the living conditions of nearby occupiers.
20. There is no outdoor ground space within the site edged red and so conditions concerning cycle and refuse / recycling bin storage would not, in this case, be necessary.
21. For the reasons given above, and taking into account all matters raised, I conclude the appeal is allowed.

Andrew Parkin

INSPECTOR

³ Paragraph M.2.(1)(d)(ii) of Class M, Part 3, Schedule 2.

⁴ As required by Paragraph W.(10)(b) of Part 3, Schedule 2 of the GPDO.