



Appeal Decision

Site visit made on 26 August 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2020

Appeal Ref: APP/C5690/W/20/3248680

19-21 Brockley Rise, Forest Hill, London SE23 1JG

- 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 Mr Danish Hanif against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/113426, dated 6 August 2019, was refused by notice dated 7 October 2019.
 - The development proposed is described on the application form as 'the proposal is for a change of use from Betting Offices to a mixed use, with a shop at the front (class A1 use) and one 2-bedroom flat to the rear (class C3 use)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO') was amended with effect from 1 August 2020 by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (the 'Regulations'). Classes M, N, O, PA and Q of Part 3 to Schedule 2 of the GPDO have been amended so that the prior approval matters for a permitted change of use to a dwellinghouse include the provision of adequate natural light in all habitable rooms.
3. Part 5 of the Regulations sets out transitional and saving provisions which mean that the provision of natural light in all habitable rooms is only a prior approval matter in respect of Classes M, N, O, PA and Q of Part 3 for applications made on or after 1 August 2020. In this instance, the application was made before 1 August 2020. Therefore, the provision of natural light in all habitable rooms is not a prior approval matter in respect of this appeal.
4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 'UC Regulations') came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the 'Use Classes Order').
5. The UC Regulations include transitional provisions which retain the effect of the permitted development rights based on the classes that were in place prior to these regulations coming into force. A building or use will continue to be

subject to any permitted development rights that it was entitled to on or before 31 August 2020. These transitional provisions will remain in place until 31 July 2021 when new, revised permitted development rights will be introduced.

6. Paragraph 4 of the UC Regulations provides that: *"If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes"*.
7. In this instance, the application was submitted to the local planning authority before 1 September 2020. Therefore, I must determine this appeal with reference to the use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020.

Main Issue

8. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class M of the GPDO.

Reasons

9. Class M of the GPDO permits a change of use of a building from a use falling within Class A1 (shops), Class A2 (financial and professional services), Class A5 (hot food takeaways), specified sui generis uses or specified mixed uses to a use falling within Class C3 (dwellinghouses), and building operations reasonably necessary to convert the building to such a use subject to a range of criteria. The specified sui generis uses include a betting office, a pay day loan shop or laundrette.
10. The Council have concluded that a change of use from a betting office to a mixed A1/C3 use is not permitted development by virtue of Schedule 2, Part 3, Class M of the GPDO.
11. The appellant contends that the Council have misinterpreted their intention, which seeks to change the use of only part of the building. They argue that the application relates solely to the change of use of the rearward part of the building from a betting office to a residential use. They explain that the remainder of the ground floor of the building will be retained either in its current use as a betting office or converted to an alternative use such as Class A1 retail use, which they argue would be permitted development by virtue of Schedule 2, Part 3, Class E of the GPDO.
12. Whilst I recognise that it may have been the appellant's intention to apply for prior approval for a change of use concerning only the rearward part of the building, this is not what is set out within the description of development, as stated on the application form. The description of development on the application form explicitly refers to a 'mixed use' and states *'the proposal is for a change of use from Betting Offices to a mixed use, with a shop at the front (class A1 use) and one 2-bedroom flat to the rear (class C3 use)'*.
13. The Council determined the application on the basis of the description of development, as stated on the application form. No substantive evidence has been put forward by the appellant to confirm that the Council have agreed to change the description of development.

14. The appeal process should not be used to evolve a scheme and it is important that I determine this appeal on the basis of what was considered by the local planning authority, and on which interested people's views were sought. Therefore, I have determined the appeal on the basis of the description of development, as stated on the application form.
15. Permitted development rights are very specific and, if a proposal does not accord with the conditions, limitations and/or restrictions specified in the applicable Part of the GPDO, development is not permitted.
16. Schedule 2, Part 3, Class M of the GPDO, among other things, permits a change of use of a building from a use as a betting office to a use falling within Class C3, subject to the prior approval matters for a permitted change of use. It does not permit a change of use of a building from a betting office to a mixed use comprising of an A1 and C3 use.
17. I recognise that it is possible to change the use of 'part of the building' as permitted development. This is because, from Article 2(1) of the GPDO, the meaning of 'building' includes 'part of a building' for Class M of Schedule 2, Part 3 of the GPDO. However, the application before me sought prior approval for a change of use of the entire ground floor of the existing building from a betting office to a mixed A1/C3 use. As such, this is not a determinative point in this appeal.
18. Notwithstanding the above, the appellant argues that the proposed conversion of part of the betting shop to an A1 use would be permitted development by virtue of Schedule 2, Part 3, Class E of the GPDO.
19. However, Class E and Class M of Schedule 2, Part 3 of the GPDO are discrete. To this regard, I have been provided with no substantive evidence, such as a certificate pursuant to Section 192 of the Town and Country Planning Act 1990, to demonstrate that it would be lawful for the works permitted by each of the respective Classes to be undertaken simultaneously at the appeal property.
20. For the reasons given above, I conclude that the proposed development is not permitted by Schedule 2, Part 3, Class M of the GPDO. Consequently, it would be development for which an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO.
21. Given my conclusion that the proposal is not permitted development, the detailed matters, including the prior approval matters and whether a condition on a previous planning permission removes permitted development rights at the appeal property, do not therefore fall to be considered as part of the determination of this appeal.

Conclusion

22. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell
INSPECTOR