



Appeal Decision

Site visit made on 15 September 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2020

Appeal Ref: APP/C5690/W/20/3252739 165-169 Lewisham Way, London SE14 6QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required 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).
 - The appeal is made by Mr Sandler against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/115646, dated 7 February 2020, was refused by notice dated 3 April 2020.
 - The development proposed is for the change of use from betting office (Sui Generis) to residential (Use Class C3) to create no.2 residential units.
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Decision

1. The appeal is allowed and prior 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 betting office (Sui Generis) to residential (Use Class C3) to create no.2 residential units at 165-169 Lewisham Way, London SE14 6QP in accordance with the terms of the application Ref DC/20/115646, dated 7 February 2020, and subject to the following condition:
 - 1) The residential units hereby approved shall not be occupied until the details of the cycle storage facilities have been submitted to and approved in writing by the local planning authority. Thereafter, the approved cycle storage facilities shall be provided for use prior to the occupation of the residential units hereby approved and retained for the life of the development.

Application for costs

2. An application for costs was made by Mr Richard Sandler against the Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

Background and Main Issue

3. Whilst policies of the development plan are capable of being material considerations, a prior approval application/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. This is because the principle of development is established through the grant of permission by the relevant provisions of the Town and Country Planning

(General Permitted Development) (England) Order 2015 (as amended) ('GPDO').

4. Paragraph W(10)(b) of the GPDO requires that regard is had to the National Planning Policy Framework ('the Framework'), so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
5. I concur with the Council that the proposal meets all of the criteria contained in the GPDO for it to be considered as permitted development. Nevertheless, in considering the proposal against Paragraph M.2(1)(d) of the GPDO, the Council refused its prior approval. This is because it is of the opinion that the proposed change of use would be undesirable as it would adversely affect the adequate provision of services and the sustainability of a key shopping area. Accordingly, the main issue in this appeal is whether the proposal complies with Paragraph M.2(1)(d) of the GPDO.

Reasons

6. The relevant condition, found in Paragraph M.2(1)(d) of the GPDO is, whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use: (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops), Class A2 (financial and professional services) or Class A5 (hot food takeaways) of that Schedule or, as the case may be, a building used as a launderette, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area.
7. In respect of part (i) of the above condition, on the information before me the appeal site does not fall within any of the specified uses. In respect of part (ii) in part, the Council in its reason for refusal concluded that the proposal would diminish the function of the key shopping area. However, the Council's officer report ('OR') confirms that there is a 'healthy and appropriate mix of uses existing within the commercial parade to ensure the sustainability and vitality of this section of Lewisham Way and that the building is not located in a key shopping area'. As such, in part, the assessment in the OR does not support the reason for refusal.
8. Moreover, in determining two separate and recent applications for prior approval¹ for the appeal site, the Council did not conclude that the site was in a key shopping area. Despite this, the Council has failed to provide any cogent explanations for this inconsistent approach. Based on this and the appellant's evidence², I have no clear reasons to conclude that the appeal site forms part of a key shopping area.
9. Furthermore, although there is no specific requirement for this under the GPDO, the appellant has submitted evidence showing a decline in the operators (Ladbroke's) betting shops³ and marketing information⁴ confirming that the ground floor of the appeal property has been marketed for a range of uses, without success.

¹ DC/19/113801 and DC/19/113803

² Paragraphs 5.20-5.29 of the appellant's 'Appeal Statement of Case'

³ Appendix 17 to appellant's 'Appeal Statement of Case'

⁴ Appendix 18 to appellant's 'Appeal Statement of Case'

10. Taking into account the above reasons, the proposed development would not undermine adequate provision of services and the sustainability of a key shopping area. As such, the proposal complies with Paragraph M.2(1)(d) of the GPDO.
11. Consequently, I find no conflict with the provisions of the Framework and the Development Plan as set out in the Council's OR, so far as relevant to the subject matter of the prior approval.
12. Although the Council refers to an appeal decision (APP/C5690/W/19/3234088) in support of its approach in determining the prior approval application, the full details of this decision are not before me. Therefore, I am unable to draw any meaningful conclusions from this. In any event, I have determined the application before me on its merits.

Conditions

13. I have taken account of the conditions suggested by the Council. Planning permission granted for the proposed development under Article 3(1) and Schedule 2, Part 3, Class M of the GPDO is subject to conditions set out in Paragraph M.3(2) of the GPDO. These require that the approved development must be completed within a period of 3 years starting with the prior approval date; and to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse. Therefore, it is not necessary to specify a time limit for the implementation of the permission. Paragraph W(12) of the GPDO states that the development must be carried out in accordance with the details approved. It is therefore not necessary for me to specify the approved plans and documents.
14. Paragraph W(13) of the GPDO advises that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. A condition requiring details and the retention of cycle storage provision is necessary to ensure that any transport and highways impacts of the development are mitigated. I have amended the Council's suggested condition in respect of this, in the interests of precision.
15. As no significant external alterations are proposed a condition requiring details of external materials is not required. The suggested conditions in relation to refuse storage and a Construction Method Statement are not related to the subject matter of prior approval and are therefore not necessary.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

M Aqbal
INSPECTOR