



Appeal Decision

Site visit made on 4 December 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal Ref: APP/N5660/W/20/3250306

54-56 Norwood High Street, London SE27 9NR

- 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 Raaxeet Shah against the decision of the London Borough of Lambeth.
 - The application Ref 19/04687/P3O, dated 5 December 2019, was refused by notice dated 11 February 2020.
 - The development proposed is prior approval for the change of use from Financial/Professional services (Use Class A2) to residential units (Use Class C3) at ground floor level of No. 54 Norwood Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. The effect of this amendment in relation to this appeal was to revoke A1, A2, A3 and B1 use classes and merge them into a new Class E 'Commercial Business and Service.' Regulation 4 of the Amendment Regulations provides that an application submitted prior to 1 September 2020 referring to uses or use classes specified in the Schedule to the Use Classes Order as at 31 August 2020 should be determined by reference to those uses or use classes. I have therefore made my decision on this basis and referred to the superseded use classes within this letter.
3. The address as listed on the application form refers to Nos. 54 and 56 Norwood High Street. The location plan submitted with the appeal documents only shows No.54 as being within the 'red line' and No.56 as being within the same ownership and outlined in blue. Despite the address on the application form being for two properties, it is clear from the location plan that the proposal only concerns No.54 Norwood High Street. Consequently, I have taken the description of the proposal from the Council's Decision Notice as this more accurately describes the proposed change of use occurring to only No. 54 Norwood High Street.
4. The Applicant has made their application for Prior Approval using an application form concerning Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 as Amended (GPDO), which covers Prior Approval from a B1 (Business) Use Class to C3 (Residential) Use Class.

However, the application description refers to Class M of the GPDO which concerns the change of use from A2 (Financial and Professional Services) to C3 (Residential). The Council has assessed the scheme on this basis under Class M of the GPDO, and I have also assessed the scheme under this basis.

5. The provisions of the GPDO as amended, under Article 3(1) and Schedule 2, Part 1, Class A, Part A.4(7) require the local planning authority to assess the proposed development solely on the basis of its impact on the amenity of any adjoining premises, taking into account any representations received. My determination of this appeal has been made on the same basis.

Main Issues

6. The main issues are:

- Is the development permitted development under the provisions of the GPDO?
- If the development is permitted development; whether the proposal would comply with the express terms of permitted development set out in Schedule 2, Part 1, Class M of the GPDO.

Reasons

Is the development permitted development?

7. According to the Council, the last permitted use¹ of the ground floor is that of A1 Retail to the front and B1 studio workshops to the rear and residential apartments on the floors above. The unit is believed by the Council to have been utilised as a Tax Accountancy use since 2008, which according to the land use gazetteer is a B1 (Business) Use.
8. I am aware of Article 3(5) of the GPDO which provides that the planning permissions granted by Schedule 2 of the GPDO do not apply if the building operation or use is unlawful. This aims to prevent unlawful development from acquiring Permitted Development rights, so that, for example, an unlawful office could not be changed to residential use under Part 3, Class O of the GPDO.
9. Whilst it is not for me under a Section 78 appeal to determine the current correct and legal use class of the unit, I note that the last change of use granted for the ground floor unit was to an A1 use with B1 studio workshops to the rear. To that end it is open to the appellant to apply for a determination under sections 191/192 of the Town and Country Planning Act 1990 if they believe the lawful use is different and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.
10. The Applicant's Statement of Case provides no evidence of a lawful use of an A2 retail unit, via means such as a certificate of lawful use to demonstrate that they are able to apply for a change of use under Class M (A2 to C3). Taking this into account, on the basis that the existing use does not appear to be lawful, in accordance with Article 3(5) of the GPDO I cannot make a determination under Class M and therefore am required to dismiss this appeal.

¹ Lambeth Planning Ref: 87/00384/PLANAP

Other Matters

11. As previously mentioned, whilst the application form has been submitted under Class O of the GPDO (B1 to C3), even if the appeal was assessed under Class O instead of Class M, the assessment would be the same as it has not been sufficiently demonstrated in the appeal documents that there has been a lawful change of use from A1 Retail.
12. Given the lack of compliance with the first matter, I have not sought to determine the remaining matters regarding living conditions and compliance with the relevant provisions of the GPDO.

Conclusion

13. For the reasons given above, I conclude that the appeal be dismissed.

J Somers

INSPECTOR