
Appeal Decision

Site visit made on 15 October 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2021

Appeal Ref: APP/J2210/W/20/3254665

77 Rough Common Road, Rough Common CT2 9DA

- 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, Paragraph M.2(1) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
 - The appeal is made by Mr Gurminder Sangha against the decision of Canterbury City Council.
 - The application Ref CA/20/00793, dated 28 March 2020, was refused by notice dated 8 June 2020.
 - The development proposed is the change of use of ground floor shop into 2no one bed flats with amenity space and off street parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address has been taken from the original application form. Although the Council's decision notice and the appeal form use different addresses, they are similar to the address used above and I have no evidence before me that either alternative address has been agreed by both main parties. I shall therefore proceed on the basis of the original address and I have no reason to conclude that doing so would prejudice any party.
3. The description of development in the heading above has also been taken from the original application form. At Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Although an alternative description has subsequently been used by the main parties, neither of the main parties has provided written confirmation that the revised description of development has been agreed. Accordingly, I have used the one that accompanied the original application form.

Background and Main Issue

4. The application has been made under the terms of Class M(a) and Class M(b) of Part 3 of Schedule 2 of the GPDO¹. Those Classes combine to permit the change of use of a building from a use falling within Class A1 (shops), as defined by the UCO² prior to amendments that are set out below, to a use falling within Class C3 (dwellinghouses) of the UCO and building operations reasonably necessary to convert the building.

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

² The Town and County Planning (Use Classes) Order 1987 (as amended).

5. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (The Regulations) have come into force since the submission of the application to which this appeal relates which would be likely to have implications for the classification of the use of the building at the appeal site. However, as a result of Sections 3(2) and 3(3) of The Regulations, the abovementioned permitted development rights shall continue to apply to buildings that fell within Class A1 of the UCO on 31 August 2020 until 31 July 2021. Moreover, The Regulations clarify that all references within the GPDO to the Classes of the UCO shall be applied as they did on 31 August 2020. I shall determine the appeal on that basis.
6. Furthermore, The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (The PDMA) have introduced the requirement for consideration to be given to the provision of adequate natural light in all habitable rooms. I will address this below.
7. The Council has not contested that the change of use would be prevented by the limitations set out at Paragraph M.1 of the abovementioned Class M of the GPDO. Nor has the Council objected to the proposal in terms of the prior approval matters relating to transport and highway impacts, contamination risks, flooding risks or the design or external appearance of the building. The evidence before me also indicates that the site is not located in a key shopping area.
8. Therefore, the main issue is whether it would be undesirable for the building to change to a use falling within Class C3 of the Schedule to the UCO because of the impact of the change of use on the adequate provision of services of the sort that may be provided by a building falling within Classes A1, A2, A5 of the schedule of The UCO (prior to its amendment) or as a laundrette, where there is a reasonable prospect of the building being used to provide such services.

Reasons

9. The appeal relates to the ground floor of the building at the appeal site which is used as a shop and appears to be the only premises within the vicinity of the site that is not within residential use other than an estate agent premises. In this regard, the appellant has not contested the Council's assertion that there are no other shops within the vicinity of the site and that the nearest shops are a substantial distance from the appeal site. Whilst the appellant has suggested that the existing shop cannot compete with supermarkets within Canterbury, the proximity of the nearest supermarket has not been clarified and, as such, I have no basis to conclude that supermarkets or other shops would serve the local community in the same way or be of comparable accessibility as the shop at the appeal site. Accordingly, the evidence before me does not demonstrate that the loss of the shop at the appeal site would be compensated for by the availability of other services and would not result in an undesirable reduction of services that are available to serve the local community.
10. The appellant's submissions suggest that using the ground floor of the building as a shop is unlikely to be viable due to competition from larger shops, the retail offer of Canterbury City Centre and a lack of passing trade. However, my site visit indicates that the premises remains in use as a shop. Whilst the appellant has identified that the shop had to close previously, this was some time ago and no viability or financial appraisal has been provided to demonstrate that the business is currently unviable or will become so. Moreover, although it has been suggested that the Covid-19 pandemic has affected the performance of the business and that the business is trading at a loss, the evidence provided in these respects is anecdotal and, as such, does not demonstrate that the shop is likely to close.

11. The appellant has highlighted that the premises has been made available through a marketing campaign but that no interest has been forthcoming. However, whilst the submissions indicate the methods that were used to highlight the availability of the premises, no details have been provided of the number of people that were contacted and no justification has been provided as to why other marketing approaches were not considered or utilised. Consequently, the evidence before me does not lead me to conclude that the attempt to find an alternative user has been exhaustive. In any case, even if I set aside those concerns and proceed on the basis that no other operators would wish to take over the premises, I am not persuaded that this, on its own, demonstrates that the existing retail service is unlikely to continue to be provided at the site. Consequently, in the absence of compelling evidence to the contrary, I find that there is a reasonable prospect that the building would continue to be used as a shop.
12. Therefore, for the reasons given above, it would be undesirable for the use of the building to change to a use falling within Class C3 of the Schedule to the UCO because of the impact of the change of use on the adequate provision of services of the sort that may be provided by a building falling within Classes A1, A2, A5 of the schedule of The UCO (prior to its amendment) or as a laundrette, where there is a reasonable prospect of the building being used to provide such services.

Other Matters

13. The use of the building for residential purposes being comparable to the residential use of most other buildings within the surrounding area does not alter my assessment of the proposal in the abovementioned respects.
14. The PDMA has introduced the provision of adequate natural light in all habitable rooms as a prior approval matter. Neither party has had opportunity to comment on this matter within their submissions. Moreover, the appellant has not had opportunity to respond to the Council's suggestion that the proposal may have implications on water quality within The Stodmarsh Nature Reserve, which is an internationally designated site, as a result of the site being within the catchment area of the River Stour. However, as the appeal is to be dismissed for the reason given above, it is not necessary for me to take any further action in relation to those matters or undertake an Appropriate Assessment in respect of The Conservation of Habitats and Species Regulations 2017 (as amended). Even if the proposal was acceptable in those respects, it would not lead me to a different conclusion in respect of the main issue.

Conclusion

15. For the reasons given above, I conclude that it would be undesirable for the use of the building to change to a use falling within Class C3 of the Schedule to the UCO from a use that fell within Class A1 of that Schedule to the UCO on 31 August 2020. Therefore, the appeal is dismissed.

Ian Harrison

INSPECTOR