



Appeal Decision

Site Visit made on 17 May 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2021

Appeal Ref: APP/N5090/W/20/3255783

Barfields, 259 Oakleigh Road North, Whetstone, LONDON N20 0DG

- 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 JA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr David Rose against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/1612/PNR, dated 25 March 2020, was refused by notice dated 21 May 2020.
 - The development proposed is the change of use of the rear building from A1 (shop) to B1(a) (offices).
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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 JA of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of the rear building from A1 (shop) to B1(a) (offices) at Barfields, 259 Oakleigh Road North, LONDON N20 0DG in accordance with the details submitted pursuant to Article 3(1) and Schedule 2, Part 3, Paragraph JA.2(1), subject to the condition that the development must be completed within a period of three years from the date of this decision in accordance with Paragraph JA.2(2)(a).

Application for Costs

2. An application for costs has been made by Mr Rose against the Council of the London Borough of Barnet. It is the subject of a separate Decision.

Main Issues

3. The main issues are whether the proposed change of use complies with the limitations imposed under paragraph JA.1(1)(a) on development permitted under Class JA and, if so, the impacts of the change of use on the sustainability of the key shopping area.

Reasons

Limitations

4. Article 3(1) and Schedule 2, Part 3, Class JA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grant planning permission for development consisting of a change of use of a building from (a) a use falling within Class A1 (shops) or A2 (financial and professional services)...to a use falling within Class B1(a) (offices) of what was the Schedule to the Town and Country Planning (Use Classes) Order 1987 (UCO).

5. That 'permitted development (PD) right' is subject to limitations and conditions, including that set out in paragraph JA.1: development is not permitted by Class JA if the building was not used for one of the uses referred to in JA(a) or (b) on 29 October 2018 or, in the case of a building which was in use before but not on that date, when it was last in use. The word 'building' is critical.
6. The appeal 'site' includes two buildings, the 'main' unit at the front and garage at the rear. It is only proposed that the use of the rear building or garage is changed to B1(a) office use – but there is no dispute that the front and rear buildings plus connecting yard currently form a single planning unit.
7. The evidence suggests that the sole lawful and existing use of the appeal site or planning unit on 29 October 2018 was as a newsagent's, being an A1 use. The 'shop floor' was confined to the main unit at the front, while the garage was used for related storage; business rates records show that the external storage area was part of the newsagent's rateable floor area.
8. The Council does not claim that, on 29 October 2018, the site was in a mixed use with retail and storage being separate primary uses. It is undisputed that the storage use was incidental or ancillary to the retail use. An incidental use is one which is functionally related to the primary use, with the relationship being one that is normally found. It follows that, so long as the incidental use remains just that, it cannot be described as a primary use in its own right.
9. Where retail is the sole primary use of land or a building, it is not unusual for part of the building, or the yard, or an outbuilding in the yard to be used for storage that is merely incidental to the retail use. That is how the site was lawfully used on 29 October 2018 – and so the appeal **building** is taken to have been in A1, not storage use on that date. It was used for purposes incidental to A1 use within a planning unit that was solely in A1 use.
10. It appears that the retail use ceased around December 2018 and the use of the main unit was changed to A2 following a grant of a Lawful Development Certificate¹ (LDC) in 2019. The use of the garage for incidental storage did not resume – but the building was not put to any other use or severed from the main unit; it merely remained empty and the planning unit was not subdivided. In any event, the building was in A1 use on 29 October 2018 as set out above.
11. The main unit is not subject to this appeal, meaning that the planning unit would be divided as a result of the proposed change of use. However, there is nothing in the GPDO to preclude a grant of prior approval in respect of part of a site or building under Class JA². I conclude that the proposed change of use complies with the limitations imposed under paragraph JA.1(1)(a).

Impacts on the Key Shopping Area

12. A previous appeal³ for the change of use of the main unit from A1 to B1a use was dismissed on the ground that the development would adversely affect the sustainability of the key shopping area (KSA) in which the site is located. The Inspector considered it 'important to maintain a retail core...to encourage customer footfall and contribute to [the] vitality of the KSA' – and that it had not been shown that 'there is no reasonable prospect of A1 use of the unit'.

¹ LDC application ref: 19/1453/192

² The definition of 'building' as including 'part of a building' in Article 2(1) of the GPDO applies to Part 3, Class JA.

³ Planning appeal ref: APP/N5090/W/3237465

13. The Council does not object that the proposed change of use of the garage would cause the same harm – and I find that it would not. The main unit is excluded from the application and is in active A2 use although the garage stands empty. The continued use of the main unit for a purpose which encourages customer footfall and contributes to the vitality of the KSA is not reliant on the garage being available for incidental storage. Consequently, the proposed change of use would not undermine the sustainability of the KSA.

Other Matters, Conditions and Conclusion

14. The UCO has been amended so that, from 1 September 2020, use classes A1, A2 and B1(a) fall within class E of Part A, Schedule 2 of the UCO and planning permission is not required for a change of use between any use falling within class E. For the avoidance of doubt, this amendment has had no bearing on my consideration of this appeal. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 provide that if any relevant planning application refers to use classes as specified on 31 August 2020, it shall be determined by reference to those classes.
15. Development is permitted under Class JA subject to condition JA.2(2)(b) that the building is used as a B1(a) use and for no other purpose. Paragraph W.(13) provides for additional conditions to be attached that are reasonably related to the subject matter of the prior approval.
16. The Council has suggested that a condition should require the submission and approval of future bin storage arrangements in order 'to ensure a satisfactory appearance for the development and satisfactory accessibility; and to protect the amenities of the area'. However, the prior approval matters for Class JA do not include appearance or amenity, and the Council has not explained the 'accessibility' issue. I consider that the condition is unnecessary and imposing it would be unreasonable.
17. The Council has also suggested that a condition should be imposed to secure cycle parking spaces. The prior approval matters include transport and highways, but the Council has not explained what harmful impact the condition would be imposed to avoid. They have said that cycle parking spaces are required to promote cycling as a mode of transport – but that does not make the condition necessary as part of a grant of prior approval.
18. I conclude that the proposed change of use is permitted development under Article 3(1) and Schedule 2, Part 3, Class JA of the Order since the building was used for A1 purposes on 29 October 2018 and the development would not undermine the sustainability of the KSA. Prior approval should be granted and it is not necessary to impose any conditions beyond those set out in the GPDO. On that basis, the appeal is allowed.

Mr Ben Plenty

INSPECTOR