



Appeal Decision

Site visit made on 11 May 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2021

Appeal Ref: APP/T5150/W/21/3266712

3 Cambridge Avenue, London NW6 5AH

- 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 A Patel, Rosmore Properties Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2809, dated 8 September 2020, was refused by notice dated 3 November 2020.
 - The development proposed is described as 'Conversion of ground floor – New Use Class E to 7 residential units'
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Notwithstanding the arguments made on behalf of the appellant including the description of the proposal provided on the application which is unclear, the application subject of the appeal before me was made on an application form specifically for development under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). The Council determined the application on this basis, and I have also proceeded with the appeal on the same basis.
3. Schedule 2, Part 3, Class M of the GPDO sets out that development is classed as permitted development if it consists of: Change of Use from Shops (Class A1), Financial and Professional Services (Class A2), Takeaways (Class A5), Betting Offices, Pay Day Loan Shops or Launderettes (Sui Generis Uses); or a Mixed Use combining use as a Dwellinghouse (Class C3) with a Shop (Class A1) or Financial and Professional Service (Class A2), Betting Office, Pay Day Loan Shop or Launderette (Sui Generis Uses); to Dwellinghouses (Class C3), and for building operations reasonably necessary for the conversion. This is subject to a number of situations where such development is not permitted, listed under paragraph M.1, and, subject to compliance with Conditions, as set out under paragraph M.2 of Class M of the GPDO.
4. Therefore, to be considered under Schedule 2, Part 3, Class M of the GPDO, the ground floor of the appeal property needs to fall within one of the above specified use classes.

5. The appellant asserts that although the original planning permission for the appeal property was for B1 and A2 uses, from September 2018 this building was leased to a charity organisation which used the ground floor as offices and therefore this has a Class B1 use. However, the appellants existing ground floor plan-Drawing No 278(2-) 002 clearly shows most of the area proposed for the conversion as having a Class A2 use. Therefore, the appellant's evidence on the existing use is inconclusive and I have no clear reasons to dispute the Council's evidence that on the relevant date 20 March 2013, the ground floor of the appeal property was occupied by Kilburn Job Centre for Class A2 use.
6. In this case, having regard to the Council's submissions it has raised issues in relation to the proposed floor space requirements under paragraph M.1 and that the proposal would not meet all of the Conditions under paragraph M.2.
7. Against that background, the main issues are: a) Whether the proposed change of use constitutes permitted development pursuant to Schedule 2, Part 3, Class M of the GPDO, having particular regard to the floor space proposed for the change of use; and b) If the development is permitted development, whether this meets all of the Conditions under paragraph M.2.

Reasons

8. Paragraph M.1 is clear that development is not permitted under Class M, if: (c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres; or (d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M.
9. Based on the submitted 'Proposed Ground Floor Plan – DR NO: 3CA 101' the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres and the development would result in more than 150 square metres of floor space in the building having changed use under Class M.
10. For the above reasons the proposal does not comply with criteria under M.1(c) and (d) of Class M of the GPDO. Consequently, the proposed change of use is not permitted development pursuant to Schedule 2, Part 3, Class M of the GPDO. Accordingly, it is not necessary for me to consider whether the proposal would meet the Conditions under paragraph M.2.

Other Matters

11. Whether or not the change of use of the ground floor to residential use could be carried out under other provisions of the GPDO is not a matter for this appeal.

Conclusion

12. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR