



Appeal Decision

Site Visit made on 22 June 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2021

Appeal Ref: APP/B1550/W/21/3268214

6 Aldermans Hill, HOCKLEY, SS5 4RW

- 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 Chandra Prajapati against the decision of Rochford District Council.
 - The application Ref 20/00529/DPDPIA, dated 11 June 2020, was refused by notice dated 4 August 2020.
 - The development proposed is ground floor conversion to residential storage and lounge.
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3 Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for ground floor conversion to residential storage and lounge at 6 Aldermans Hill, HOCKLEY, SS5 4RW in accordance with the terms of the application, Ref 20/00529/DPDPIA, dated 11 June 2020, and the details submitted with it, pursuant to Schedule 2, Part 3, Class M of the GPDO.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force and have made significant amendments to the previous system of use classes. Under the new system, Class A has been revoked and a new Class E which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes within Class E.
3. The application was submitted prior to the publication on 1 September 2020 and therefore under the transitional arrangements in place until 31 July 2021 the use classes are to be read as applied on 31 August 2020.
4. Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits, amongst other things, development consisting of a change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellings houses). This is a qualified right in that exceptions apply whereby development is not permitted by Class M. There is no dispute that the appeal site was previously in use as a Class A1 use and as

such it is not disputed that the appeal proposal constitutes permitted development.

5. Under the provisions of the GPDO, development is permitted under Part 3, Schedule 2, Class M subject to Condition M.2 (1) that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to a range of potential impacts. In this case, it relates to (d) whether it is undesirable for the building to change to a use falling within Class C3 (dwelling houses) 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) of that Schedule, 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.

Main Issues

6. Having regard to the GPDO and the reasons for refusal, the main issue is:
 - whether adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) exist.

Reasons

Effect of the change of use

7. Paragraph M.2(d)(i) indicates that consideration can be given as to whether there is an adequate provision of services of the sort that may be provided by a building falling within Class A1, where there is a reasonable prospect of the building being used to provide such services.
8. Policy RTC3 of the Rochford District Council Core Strategy states that the Council will seek to ensure that retail premises in neighbourhood shopping areas outside town centres are retained. The change of use of the ground floor of existing retail premises to non-retail use outside of town centres will be permitted subject to a range of conditions, including that all reasonable attempts have been made to sell or let the premises for retail use, but without success.
9. DM36 of the Rochford District Council – Local Development Framework Development Management Plan (DMP) states that retail premises in villages and neighbourhood shopping areas outside town centres will be retained. It outlines a number of criteria where changes of use to non-retail will be permitted, including where the loss of the retail unit is justified. This should be because the unit is vacant or that an A1 retail use is not financially viable. In both circumstances it is required that all reasonable attempts are made to sell or let the premises for retail use. In addition, proposals should not result in the removal of any independent means of accessing upper floors or otherwise prevent an effective use being made of the upper floor.
10. Development plan policies may be relevant in prior approval cases, but only insofar as they relate to the matters to be considered. If and where the plan contains material that is relevant to the planning judgement to be made, it may be taken into account as a form of evidence for that prior approval matter.

11. The requirements of the prior approval is whether there is an adequate provision of services of the sort that may be provided by a building falling within Class A1, which is a different test from the requirements set out in both policies DM36 and RTC3. Therefore, I have given the lack of marketing of the site for a continued retail use and the resulting conflict with the adopted policies only limited weight in my considerations.
12. The appeal site is located within a predominately residential area, with the central shopping area of Hockley being located a short distance from the site. The site comprises a ground floor retail unit with living accommodation above, at the time of my visit the shop was closed and the evidence before me indicates that it has been since April 2020.
13. The Council has indicated that the site is within a neighbourhood shopping area although this point is not agreed by the appellant. In addition, I have not been provided with any definition or local plan allocation which defines these areas. Based on an assessment of the site which appears part of a residential street, I am unable to conclude that the appeal site comprises a neighbourhood shopping area, albeit I recognise any retail use of the site could serve nearby residents.
14. The site is in close proximity to a range of shops and services which are provided within Hockley Town Centre, some of these shops also benefit from car parking or have short stay on street parking outside. They are also in good proximity to public car parks. There is also the ability for shoppers to make linked trips to obtain a greater range of goods which would make it more attractive to residents even those who may be closer to the appeal site. The lack of on-site parking or on-street parking outside of the appeal site would also deter some customers.
15. As a result of the alternative provision of shops within a short distance from the appeal site, I am satisfied that the loss of the A1 retail unit would not be detrimental to the adequate delivery of such services within the vicinity. Therefore, none of the matters set out at Paragraph M.2(d)(i) indicate that prior approval should be withheld.

Other Matters

16. The provisions of the GPDO require the local planning authority to assess the proposed development in respect of transport and highways impacts of the development, contamination risks on the site, flood risks on the site and the design or external appearance of the site. The Council has raised no objection on these grounds, and I have found no reason to conclude otherwise.

Conclusion

17. For the reasons given above, I conclude the appeal should be allowed and prior approval should be granted.
18. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class M of the GPDO is subject to the condition that it must be completed within a period of 3 years of the prior approval date.

G Pannell

INSPECTOR