



Appeal Decision

Site visit made on 25 August 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Appeal Ref: APP/R5510/W/21/3270674

24-32 Fairfield Road, Yiewsley, UB7 8EX

- 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 MA of the Town Country Planning (General Permitted Development) Order 2015 (as amended).
 - The appeal is made by Mr Mustafa Karaaslan against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 73430/APP/2020/2354, dated 28 July 2020, was refused by notice dated 8 October 2020.
 - The development proposed is change of use from retail shop (A1) into 3 residential flats (C3).
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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. Various classes, including A1, were replaced by Class E in Part A of Schedule 2. The proposal therefore falls to be considered under Class MA of the Order.
3. However, paragraph 4 of the Schedule (the transitional and saving provision) to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No 2) Order 2021 states that where development would be subject to a new condition, and the application for prior approval made before 1st August 2021, it may proceed subject to the conditions imposed by the previous provision.
4. Class MA of Schedule 2 of the GPDO introduces a new condition by requiring that the application for prior approval under this class be made on or after 1st August 2021. This is not substantially the same as a condition to which an approval under Class M was subject. It is therefore necessary for me to assess the proposal against the conditions imposed on development under Class M.

Main issue

5. The main issue is whether prior approval should be granted, with particular regard to the adequacy and sustainability of the shopping area.

Reasons

6. The appeal site comprises the ground floor of a 2-storey, brick built parade of shops, with residential accommodation above. The ground floor is nominally split into 5 units, but the middle 3 premises have been combined to form a hardware shop. The 2 units on either side have roller doors and I observed that the one on the right was in use, possibly for storage. I have no information regarding the current use of the unit on the left, if any.
7. The development would preserve the 3 left hand units for commercial use, but significantly truncate them to approximately 20 m² each, and the remaining 2 units would be entirely converted to create a total of 3 studio flats. Nearly 70% of the retail floorspace would be lost.
8. The relevant condition to which the proposal would have been subject under Class M requires consideration of whether it is undesirable for a building in retail use to change to Class C3 because of the impact on (i) the adequate provision of services, or (ii) on the sustainability of a key shopping area.
9. There is no suggestion that loss of the commercial space would lead to inadequate provision of services locally. Given the number and variety of shops nearby, I see no reason to come to a different conclusion.
10. With regard to part (ii), there is no definition in the Order of a 'key shopping area'. The appeal site is within the town centre boundary, which acts as a focus for shopping, employment and leisure activities. Fairfield Road is mostly defined as either a primary or a secondary shopping centre, and therefore effectively identified as 'key' by the Council. The appeal site is just outside the shopping centre boundary, but when seen on the ground it forms part of an almost continuous line of commercial activity, and it is clear that it contributes to the critical mass of facilities required for the primary and secondary shopping centres to thrive. On this basis, I am satisfied that the appeal site contributes positively to the sustainability of the key shopping area.
11. Loss of a significant area of floorspace at the appeal site from either Class A1, or the new wider commercial Class E, would reduce the opportunities for commercial activity along the ground floor of Fairfield Road, harmfully eroding the town centre character and attractiveness of the shopping area as a destination. No data have been provided that would give an indication of whether or not a critical mass of appropriate town centre uses would remain following this development. In the absence of evidence to the contrary, I conclude that the proposed loss of viable retail or commercial use would reduce the overall sustainability of the key shopping area.
12. It has been suggested that the units are not an attractive proposition for retail use and, implicit in this, is that their loss would not harm the sustainability of the shopping area. I have had regard to the marketing letter (July 2019) and do not doubt that at that juncture the units had been vacant for some time. However, by the time of my site visit the middle 3 units were in use by a hardware shop, and the unit on the end apparently used for storage. The findings of the marketing evidence have therefore been superseded by what has taken place on the ground.
13. In addition, even if the 2 end units are not currently let, given the above context, I am satisfied that there is a reasonable prospect of them being

utilised to provide the wider commercial uses allowed by Class E, to which Class A1 now belongs.

14. I acknowledge that 3 retail units would remain. However, the development would result in 2 units being entirely lost and the floorspace of the remaining 3 reduced significantly. I have no evidence that 3 very small units, even if combined, would be as attractive to commercial users as the current arrangement, and in the absence of this conclude that it is unlikely. Even allowing for the remaining 3 frontages, the development therefore represents a harmful loss in retail space.
15. The proposal would contribute to the housing supply in the area, the benefit of which is implicitly recognised in the permitted development rights for such conversion. However, the conditions for application of these rights require that I assess the effect of the change of use on the adequacy of the provision of services and the sustainability of the shopping area.
16. I have noted that prior approval was not required at the same site for a change of use from retail to 2 self-contained flats in January 2020¹. Not only did that proposal retain considerably more commercial space, but based on the marketing evidence the units were likely empty and had been for some time. For this reason, I find that the situation before me now is significantly different.
17. I have also taken into consideration the similar approvals granted between 1996 and 2017 at 63-69 Fairfield Road. This building would originally have formed a similar parade of shops to the appeal site, and I observed that 4 of the 6 units had since been converted to flats. Again, I am in little doubt that the economic situation has changed since then and the earlier approvals therefore do not outweigh my finding that the appeal site is now commercially viable.
18. Pre-application advice from the Council is given without prejudice. In any event, I have determined this appeal on its planning merits taking into account all the evidence that is before me.

Conclusions

19. The proposed works would have a negative impact on the sustainability of a key shopping area and would therefore not comply with the conditions required for conversion of Class E to C3, under the previous provision of the Order relating to Class M.
20. I therefore conclude that the appeal should be dismissed.

B Davies

INSPECTOR

¹ 75256/APP/2019/3765, 17 January 2020