
Appeal Decisions

Site visit made on 20 September 2021

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/L5240/W/21/3266287 (Appeal A)
108 Selsdon Road, South Croydon CR2 6PG

- 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 G Stern against the decision of the Council of the London Borough of Croydon.
 - The application Ref 20/05399/GPDO, dated 17 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is the conversion of Class A1 (shop) to Class C3 (residential) to provide four flats.
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Appeal Ref: APP/L5240/W/21/3277134 (Appeal B)
108 Selsdon Road, South Croydon CR2 6PG

- 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 G Stern against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/01155/GPDO, dated 5 March 2021, was refused by notice dated 30 April 2021.
 - The development proposed is the conversion of Class A1 (shop) to Class C3 (residential) to provide four flats.
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Decision Appeal A

1. The appeal is dismissed.

Decision Appeal B

2. The appeal is dismissed

Application for costs

3. An application for costs was made in respect of both appeals by Mr G Stern against the Council of the London Borough of Croydon. These applications are the subject of separate Decisions.

Procedural matter

4. Both appeals have been made utilising Class M of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

(GPDO). Class M has subsequently been replaced by class MA following the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which made amendments to the Use Classes Order including moving various categories, including shops, into a new Use Class E.

5. However, under the section entitled Conditions at MA.2(3) it is made clear that an application for prior approval for development under Class MA may not be made before 1 August 2021. As the applications and decisions by the Council were made before this date I will consider the appeals under Class M rather than the updated Class MA, with a shop being the previous Use Class of A1.

Main Issues (Appeals A and B)

6. The main issues in both appeals are whether or not the proposed development would:-
 - a) Be in accordance with Schedule 2, part 3, Class M paragraphs M.1 (a)(i) and (ii) of the General Permitted Development Order 2015 (as amended).
 - b) Provide suitable onsite storage provision for cycles.

Reasons

7. The two applications are for exactly the same change of use and consequently my reasoning will relate to both appeals unless I mention a specific appeal.
8. The appeal property is an end of terrace commercial unit situated at the corner of Selsdon Road and Junction Road. The unit has a relatively short frontage onto Selsdon Road with a longer frontage containing three garage style doors facing Junction Road.

Whether or not the proposed development would be in accordance with Schedule 2, part 3, Class M paragraphs M.1 (a)(i) and (ii) of the General Permitted Development Order 2015 (as amended).

9. Class M of the GPDO allows the change of use of a building falling within, amongst others, Class A1 (shops), to a Class C3 dwelling house. The appeal property has most recently been used as tyre sales and fitting enterprise which the appellant considers to be Use Class A1, and I note that a 2017 Council Enforcement Officer's report stated the use of the premises as *an A1 shop and the fitting bays as ancillary use to this*.
10. However, whilst there is certainly an element of retail in such a business, that retail element cannot be divorced from the fitting element, as it can only be on the very rarest of occasions, if at all, that members of the public purchase tyres to fit themselves or have fitted elsewhere. I cannot therefore agree that the fitting element is ancillary to the retail element, it is a part and parcel of the whole process. Furthermore, the fitting element requires specialist equipment that is not commensurate with a retail operation, being more akin to an industrial process. The fitting process also requires skilled labour that is not required in a standard retail operation. I also note that the area designated as 'shop' on drawing 990-A100 is a relatively small area compared to the rest of the ground floor area, which is used for the fitting element.

11. For these reasons I cannot accept that the business enterprise that has taken place at the premises is wholly retail. It follows that, as it is not Use Class A1, the change of use does not fall under the provisions of Class M of the GPDO.
12. In respect of Appeal B my attention has been drawn to an article from an unnamed publication that discusses the Use Class of, amongst other things, tyre fitting. The article mentions various examples of case law although none of these have been put before me. I do note however that the article finishes with the sentence *however, the physical characteristics of most modern fitting establishments would suggest that an industrial aspect is dominant*.
13. This is in line with my findings above and I can see nothing else in the article that would lead me to a different conclusion.

Cycle parking

14. The Council also have concerns regarding the lack of cycle parking within the proposed developments, and M.2-(1) of the GPDO makes clear that prior approval of the determining authority will be required as to a number of criteria including the transport and highways impacts of the development. However, this section of the GPDO also stipulates that these criteria only come into play *where the development proposed is development under Class M(a)* and I have found this not to be the case.

Conclusion

15. For the above reasons, and notwithstanding the conclusion of the Council's Enforcement Officer in respect of this matter, I conclude that both of the appeals should be dismissed.

John Wilde

INSPECTOR