



Appeal Decision

Site visit made on 2 November 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2021

Appeal Ref: APP/Q5300/W/21/3272336 772 Hertford Road, Enfield EN3 6PX

- 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 J Ruane of Property Consultants against the decision of the Council of the London Borough of Enfield.
 - The application Ref 21/00107/PIA, dated 7 January 2021, was refused by notice dated 18 March 2021.
 - The development proposed is described as Change of use of building ancillary to former A1 retail shop to form a studio flat with necessary works and alterations to effect the change of use with parking, cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 April 2021 the Town and Country Planning (General Permitted Development Etc.) (England) (Amendment) Order 2021 came into force and the revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have given the Council and the Appellant the opportunity to comment upon the implications of the changes introduced for their respective cases and taken these into account in determining this appeal.
3. On 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 amended the system of use classes. The new system incorporates Class A1 (retail) into a new broader Class E (Commercial, Business and Service) use class, which would fall to be considered under Class MA of the General Permitted Development Order (the GPDO). However, paragraph 4 of the Schedule to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No 2) Order 2021 states where development would be subject to a new condition, and the application for prior approval was made before 1 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 the application for prior approval to be made on or after 1 August 2021. This condition is different to the conditions under Class M. Therefore, it is necessary to assess this appeal proposal against the conditions imposed under Class M.

Main Issues

5. The main issues are:

- whether the proposal would be permitted development under Class M, with particular reference to whether the appeal site has an existing A1 use and meets the requirements of M.1(a) (i) and (ii); and,
- if so, whether or not prior approval is required because it would be undesirable to change the use of the building.

Reasons

Retail use

6. The appeal site comprises an outbuilding and land which was historically used as ancillary storage in association with the retail use of the ground floor of the main building. Permission was granted in 2000 (Ref TP/00/0032) for the shop within the main building to be converted to residential use, which is understood to have taken place in 2000. Flats in the main building are now under separate ownership. The appeal site has been owned by the appellant since 2006. At my visit there was no shop present, and the ground floor of the main building was in residential use. The outbuilding was missing sections of doors and windows, and the plant growth suggests it has not served any retail function for a number of years.
7. Part M.1(a) of Class M states that development is not permitted if— (i) the building was not used for one of the uses referred to in Class M on 20 March 2013, or (ii) in the case of a building which was in use before that date but not in use on that date, when it was last in use. Therefore, the outbuilding must have an A1 use. In principle an ancillary A1 use could meet this requirement. The appellant asserts as there has been no conversion of the outbuilding it would qualify for rights under Class M, as it maintains its previous use.
8. I have been provided with excerpts of Appeal Ref APP/Q5300/W/19/3226046, in which that Inspector was of the view that an ancillary use could not exist without a primary A1 use of the main building. The conversion of the main building had started a new chapter in the planning history, so the A1 use had been lost. Consequently, the outbuilding could not have an ancillary A1 use, failing to comply with limitation M.1(a)(i). I have not been provided with substantive evidence that would lead me to conclude this principle does not also apply to this appeal site. In my view the retail use of the appeal site building has therefore been lost.
9. I have also been provided with a series of aerial photographs and images by the Council. These show the appeal site at various intervals since 2000, bringing into question the intervening use of the appeal site. Initially it was maintained in a tidy state, but from 2011 it was used for storage including a vehicle, paraphernalia, and materials over a number of years. The significant extent and nature of storage casts significant doubt as to whether the site was last used or was in a retail use on 20 March 2013, or whether in fact it has been put to another use.
10. The appellant has had the opportunity to address the concerns through the appeal process, however, has provided little further evidence. While there have been no applications to formally change the use, it is not clear whether

any other intervening use would even have required express consent. The provisions of paragraph 53 of the Framework relate to Article 4 Directions, so as the appeal site is not covered by an Article 4 Direction, this matter does not address the concerns in respect of the use of the site.

11. Paragraph W.(3) of Part 3 of the GPDO states an application may be refused where insufficient information is provided to enable it to be established a development complies with any applicable conditions, limitations, or restrictions. For the reasons set out above, insufficient evidence has been submitted to demonstrate the proposal would comply with limitation M1(a)i) or ii), so prior approval should not be given.

Prior approval matters

12. The Council's decision notice also refers to the absence of a noise report resulting in a failure to satisfy prior approval limitation M2(1)(d)(i). This limitation relates to the provision of services of the sort that may be provided by a building within Class A1 or A2, where there is a reasonable prospect of the building being used to provide such services. As I have found there is insufficient information provided to demonstrate the proposal would be permitted development, it is not necessary to consider this matter further.

Other Matters

13. The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 inserted a provision into Article 3(9A) of the GPDO that from April 2021, Schedule 2 doesn't permit any new dwellinghouse where the gross internal floorspace is less than 37m² or does not comply with the Nationally Described Space Standard (2015). The application and appeal forms state the internal floor area would be 18m², which concurs with the plans before me and what I saw on my visit. However, as I have found there is insufficient information provided to demonstrate the proposal would be permitted development, it is not necessary to consider this matter further.

Conclusion

14. For the reasons given above, the appeal does not succeed.

Dan Szymanski

INSPECTOR