



Appeal Decision

Site Visit made on 9 November 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2021

Appeal Ref: APP/P1133/W/21/3277751

1 Abbotsridge Drive, Ogwell TQ12 6YS

- 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 M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Andrew Serman against the decision of Teignbridge District Council.
 - The application Ref 21/00490/NPA, dated 28 February 2021, was refused by notice dated 21 May 2021.
 - The development proposed is Application for prior approval under Part 3 Class M (a) and (b) and paragraph W of the GPDO for change of use of shop from retail to residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of development from the Council's Decision Notice as the application form on the appeal file does not include one.
3. The application for prior approval now the subject of the appeal (the appeal proposal) was determined on 21 May 2021 by the Council in relation to the relevant legislation in force at the time it made its decision. The Council concluded that the application met the criteria of paragraphs M. and M.1 of Class M, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) as it was written at that time. The Council's decision to refuse prior approval was therefore based on the alleged conflict with paragraph M.2-(1)(d)(i) of Class M, Part 3, Schedule 2 of the GPDO as it was then written.
4. Be that as it may, I am required to determine the appeal against a refusal to grant approval under Article 3(1) and Schedule 2, Part 3 of the GPDO on the basis of the legislation in force at the time of my decision. Furthermore, section 79 of the Town and Country Planning Act 1990 (as amended) (the Act) sets out that on an appeal under section 78, an Inspector appointed by the Secretary of State may deal with the application as if it had been made to him in the first instance. Accordingly, prior to considering the Council's reason for refusal set out in its Decision Notice, it is appropriate and necessary for me to consider whether the appeal proposal is permitted development in relation to the legislation that is in force now.

Background and Main Issue

5. The application made to the Council and now the subject of the appeal was to determine if the Council's prior approval was required for the proposed change of use of shop from retail to residential use. The application was submitted under Schedule 2, Part 3, Class M of the GPDO.
6. On 1 September 2020, the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order) was amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020¹ (the Amendment Regulations). Amongst other things, the Amendment Regulations revoked Class A1 (shops) and created various new use classes.
7. When the prior approval application was submitted to the Council, transitional provisions (termed the material period) under the Amendment Regulations² retained, up until 31 July 2021, the effect of the permitted development rights based on the Use Classes that were in place prior to the Amendment Regulations coming into force. Up until 31 July 2021, a building or use could therefore continue to be subject to any permitted development rights that it was entitled to on or before 31 August 2020.
8. Accordingly, during the material period, the appeal site could still be considered as involving a Class A1 use. When the prior approval application was submitted to and determined by the Council, Class M of the GPDO related to development consisting of, amongst other aspects, a change of use of a building from a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses). The prior approval application submitted to the Council for a change of use from Class A1 (shops) to C3 (dwellinghouses) therefore benefited, at that time, from permitted development rights under Class M. The Council then proceeded to consider that application against the matters (the prior approval matters) set out in paragraph M.2(1).
9. However, on 1 August 2021, the GPDO was amended by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021³ (Amendment Order). Amongst other aspects, this amended Class M of the GPDO, removing reference in paragraph M (Permitted Development) to use classes such as the revoked use Class A1. The Amendment Order includes some transitional arrangements⁴ which, amongst other aspects, allow for certain development (termed protected development) to be determined until the end of 31 July 2022 as if the amendments made by the Amendment Order had not been made. The Amendment Order sets out that protected development: applies to development which was permitted under a provision of Schedule 2 to the GPDO prior to the amendment but is no longer permitted under any provision of that Schedule as it has effect on or after 1 August 2021; and relates to land or a building which was used immediately before 1 August 2021 for a purpose which made the land or building eligible for the previous permission.
10. Consequently, prior approval applications for protected development made on or before 31 July 2022 should be determined on the previous wording of Class M of the GPDO, which included changes from Class A1 shops to Class C3

¹ Statutory Instrument, 2020 No. 757.

² Paragraph 3. of the Amendment Regulations.

³ Statutory Instrument, 2021 No. 814.

⁴ Paragraph 5.-(1)(c) of the Schedule to the Amendment Order.

dwellinghouses. However, the submitted evidence indicates that the appeal site, which has not been in use as a shop for some time, was not in use as a shop immediately before 1 August 2021. The transitional arrangements are therefore not applicable in this case and thus the appeal proposal does not qualify as protected development under the Amendment Order.

11. Accordingly, the appeal has to be determined against the current wording of Class M of the GPDO⁵. The material period under the Amendment Regulations has also now passed, and the prior approval application was not submitted prior to the commencement of the material period⁶. The Amendment Regulations therefore indicate that the appeal site can also no longer be considered as a Class A1 use.
12. The main issue is therefore whether the proposed development is permitted development under Schedule 2, Part 3, Class M of the latest, current GPDO⁵.

Reasons

13. The application made to the Council and now the subject of the appeal was to determine if the Council's prior approval was required under Schedule 2, Part 3, Class M of the GPDO, and was submitted on that basis. Class M of the latest, current version of GPDO⁵ permits development consisting of a change of use of a building from a launderette, betting office, pay day loan shop or hot food takeaway to a dwellinghouse.
14. The appeal site contains a disused corner shop and the submitted evidence does not indicate that the building on the site was in use as a launderette, betting office, pay day loan shop or hot food takeaway on 20 March 2013 or when it was last in use, as required by the current wording of paragraph M.1 of Class M. The proposed change of the shop to a residential use does therefore not meet the current paragraph M. definition of permitted development.
15. Accordingly, the appeal proposal is not permitted development under Schedule 2, Part 3, Class M of the latest, current GPDO⁵. As such, planning permission is not granted under Article 3(1) and Schedule 2 of the GPDO. On the basis that the proposed change of use is not permitted development under Class M, it is also not necessary for me to consider the associated prior approval matters under paragraph M.2(1) as doing so would not lead me to a different decision.

Other matters

16. The application submitted was for prior approval under Class M of the GPDO, and I have determined the appeal on that basis. Although I have found that the appeal proposal is not permitted development under Class M, it is not for me to consider the proposed change of use against other parts of the GPDO.
17. I recognise that the appellant queries what use class the site now falls into and that there is some discussion in the submitted appeal documents as to whether it would appropriately be categorised as use Class E (Commercial, business and service) or Class F.2 (Local community). However, within the context of an appeal under section 78 of the Act, it is also not for me to formally determine the lawful use of land and what the use may be defined as under the latest,

⁵ As amended by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 (Amendment Order).

⁶ Paragraph 4. of the Amendment Regulations.

current version of the Use Classes Order. If a person wishes to ascertain what use class an existing use is or would be, the correct approach is for an application to be made under section 191 of the Act for a certificate of lawful use from the Council.

18. The appellant queries whether the Council's decision was, amongst other aspects, well thought out, took account of all of the available information, stemmed from a positive and pro-active approach, and gave fair weight to the numerous supporting representations and a fair appraisal of the appellant's situation including in relation to any prospective sales of the property. A number of other matters have also been raised and supporting information provided, such as in relation to the history of the shop and it not being a viable business, the appellant's marketing of it and difficulties with raising finances and mortgaging, the role of the parish council, repair and renovation costs, alternative solutions, local and national planning policies, and recent changes in trading and economic conditions. However, an application for prior approval is not the same as a full planning application, and the matters for consideration are limited to those set out in the relevant paragraphs of the GPDO⁵.
19. Accordingly, although the appellant has put forward various well-argued points and set out their need for the proposed change in use, the considerations for the decision maker in such cases are limited and do not allow for such matters as those detailed above to be taken into account. Furthermore, the statement in the Council's Delegated Report indicates that the Council considered human rights matters to some extent and while I recognise the appellant's and his family's situation and needs, I am satisfied that dismissing the appeal would not result in a violation of their human rights, including in relation to Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. This is because, although the upholding of the GPDO would in this case interfere with their wishes to use the property as they see fit and the right to private and family life, a home and the peaceful enjoyment of possessions, the interference would be in accordance with the law – the GPDO – and is necessary, justified and proportionate with regard to the need to uphold the operation of the planning system in the public interest. In addition, the appellant has the option to pursue a change of use through other means, by for example either confirming the use class of the shop allows for a change of use under Schedule 2, Part 3, Class MA of the GPDO⁵ or via the submission of a full planning application where matters such as those put to me in support of this appeal could be taken into account.

Conclusion

20. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR