



Appeal Decision

Site visit made on 20 September 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/R5510/W/21/3278659

103 Lansbury Drive, Hayes UB4 8RW

- 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 Rai (F/O Zanoply Ltd) against the decision of London Borough of Hillingdon.
 - The application Ref 10204/APP/2021/796, dated 19 February 2021, was refused by notice dated 12 May 2021.
 - The development proposed was described as '*Prior Approval is for the Change of Use from Commercial to C3 Use Class (Dwelling House) under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class M*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. 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 GPDO), planning permission is granted for the change of use of certain uses to dwellinghouses, subject to limitations and conditions. Notwithstanding the range of uses cited at paragraph M(a)(i) of Class M, paragraph M2(3)(c) of the same Class states that where a proposed development includes the change of use from a use falling within Use Class A1 or A2 of the Use Classes Order¹ an application for a determination as to whether the prior approval of the Local Planning Authority will be required must be made on or before 31 July 2021. The date of the appellant's application is set out in the banner, above.
3. Although Class MA was inserted into the GPDO² granting permission for the change of use of commercial, business and service uses (uses falling within Use Class E) to dwellinghouses its introduction was subject to saving and transitional provisions. Applications for prior approval under Class MA could not be made before 1 August 2021. The Council have stated that their appeal statement was prepared on the basis of extant legislation at the time of the application's determination. However, unless specifically covered by transitional or saving provisions, prior approval applications must be

¹ On 1 September 2020 the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 came into force. Amongst other changes brought about by the Regulations, Use Class A was revoked and replaced by Use Class E, with uses previously falling within Use Class A1 placed within a broader Use Class E.

² By the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021/428 – 21 April 2021

determined with regard to the GPDO as in force at the time of the appeal decision, not the Council's decision.

4. Paragraph M1(a) to (g) sets out the circumstances in which development is not permitted whilst paragraph M2(1) to (3) sets out certain conditions to which the permission granted by Class M is subject. Paragraph M2(1) also sets out those matters for which a determination of whether or not prior approval will be required will be necessary. Class M(a) provides for the change of use in the manner set out above whilst Class M(b) provides for building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouse). Additionally, paragraph W sets out the procedures for applications for prior approval made under Part 3 of the GPDO.
5. The appellant's appeal submission was accompanied by a second set of drawings with a 'date prepared' notation of 11 May 2021. As this was the day immediately prior to the Council's determination of the application and does not (and cannot) tally with the 'date received' dates noted by the Council on the decision notice³, I cannot be certain that these formed part of the application as considered by the Council.
6. The 'Procedural Guide: Planning appeals – England' is quite clear⁴ that the appeal process should not be used to evolve a scheme. It goes on to state that it is important that what is considered at appeal is essentially what was considered by the local planning authority. To accept amendments at the appeal stage can materially alter the nature of a proposal and deny the rights of others, including the Council, to properly consider the revised scheme, thereby causing prejudice to those parties. I return to this matter, below.

Main Issues

7. Having regard to the procedural matters set out above, the main issues are whether or not the proposed development:
 - Benefits from the permission granted under the relevant section of the GPDO;
 - Would provide adequate natural light in all habitable rooms of the dwellinghouses; and
 - Would be undesirable because of the impact of the change of use on the adequate provision of services currently provided by the appeal building.

Reasons

Whether permitted development

8. The property referred to as 103 Lansbury Road is part of a short two storey terraced parade at the junction of Lansbury Road and Balmoral Drive. There are similar terraced parades on the other corners of the junction hosting a mix of mostly commercial uses at ground floor with residential above.
9. No. 103 is the middle property within a terraced block of three units, albeit that at ground floor level Nos. 101 and 103 form one retail unit, accessed via a shop entrance at No. 101. The submitted plans show a range of single storey

³ Plans – received 02 Mar 2021

⁴ Annex M: Can a proposed scheme be amended? – paragraph M.2

outriggers at the rear of both Nos. 101 and 103, the latter of which accommodates storage and welfare facilities associated with the ground floor commercial use. Access to an existing upper floor residential flat at No. 103a is taken from the rear, through this portion of the building, leading to an internal flight of stairs.

10. The proposal seeks to convert the storage and welfare areas at the rear of No. 103, as well as a small portion of the existing retail floorspace, to create a ground floor studio flat. This would be accessed from the rear (private access) and the front (shared access with No. 103a). The existing shopfront at No. 103 would be altered to accommodate a doorway entrance. The extent of the application is shown⁵ to include the middle unit of the terrace of three (No. 103) and the alterations
11. The Council are concerned that the proposal would include building operations relating to the adjoining commercial unit and also operations which would not be reasonably necessary to convert the building to a dwelling. The alterations to the shopfront at No. 103 fall within the extent of the application site boundary and provide access from Lansbury Drive to the proposed ground floor flat. Whilst these works would also facilitate a relocated access to the existing flat at No. 103a, I see no reason why they would not be reasonably necessary to convert the building to a residential use. I accept that the proposed ground floor flat would also be accessed from the existing rear yard access, but this does not render the creation of an access from the front either unreasonable or unnecessary.
12. There are changes internally to the proportions of the retail unit that are shown on the submitted plans but that are not within the extent of the application site. However, I have no evidence before me that they amount to, or facilitate, a change of use to a dwelling and, in any event, lie outside the application red line boundary shown on the submitted plans.
13. In respect of the internal alterations within the extent of the application site boundary, these would facilitate the provision of an internal storage area and bathroom for the proposed ground floor flat. These works are also reasonably necessary for the conversion of the building to a dwelling. Nothing that I have been presented with persuades me therefore that the extent of the works are anything other than reasonably necessary for the conversion of the building to a dwelling.

Adequate Natural Light

14. The proposed ground floor flat would comprise of an open-plan living / dining / kitchen / sleeping area, with a separate bathroom, storage area and entrance hall. This single area would be served by two windows, one on the rear face and one on the side facing elevation of existing ground floor build-outs.
15. Although the outlook from these windows would be reasonably open across intervening yard walls and single storey flat-roofed outbuildings and garages at neighbouring properties, the open-plan living area is deep and the windows would not be particularly large. As the plans also show that the area immediately outside these windows would be utilised for refuse storage and car

⁵ Site Plan / Block Plan drawing

parking, it is also likely that there would be further impediment to light from these windows.

16. The appellant has not in any event submitted any compelling evidence to demonstrate that these windows would provide sufficient daylight penetration to the living area. As such, I cannot be certain that the proposal would provide adequate natural light to the ground floor flat and that the proposal would comply with the provisions and conditions set out at paragraph M.2(1)(f) of the GPDO.
17. The appeal submission was accompanied by a further set of proposed plans⁶ dated the day immediately prior to the Council's determination of the application. These plans show a series of rooflights within the flat-roofed area and would serve the open-plan living area. The status of these plans is not explained within the appellant's submission nor do I consider it likely, given the respective dates of the two sets of plans and the plans list on the Council's decision notice, that these were the plans considered by the Council.
18. Even if I were to accept these plans at this late stage, I have no other compelling evidence before me to demonstrate that the revisions set out on these plans would provide adequate natural light to the habitable room of the proposed dwelling. This matter does not alter my conclusion in respect of the requirements of paragraph M.2(1)(f) of the Order.

Impact of the change of use

19. There is a small cluster of commercial premises around the crossroads junction of Lansbury Drive and Balmoral Drive. The nature of these uses is mixed but, at the time of my visit to the site, the retail use at No. 103 (together with No. 101) appeared to be the only convenience-type store in this location.
20. The proposal would not result in the immediate loss of a retail use; the existing shop entrance and majority of the retail floorspace would be retained. However, the proposal would result in the gradual erosion of the commercial presence at Nos. 101 and 103. The floorspace would be reduced, the storage areas to the rear would be lost and there is no indication how business refuse would be stored.
21. There are, I accept, other retail premises within varying distances and journey times of the appeal site. These incur more lengthy walks or alternatively quicker trips by car, than required to access the retail unit at No. 103 (and No. 101). However, it is also clear that the retail facility offered at No. 103 (and No. 101) is long-stranding and is truly valued by the local community for its convenience and range of products.
22. Whilst the community concerns regarding the total loss of the retail use as a consequence of the proposal are somewhat misplaced, it is likely that the effect of the proposal would be to undermine the effective operation, and therefore attractiveness of, the premises as a retail unit. In an immediate area sensitive to changes in use in the manner set out by the Council, the proposal would undermine the continued adequate provision of services sought by paragraph M.2(1)(d)(i). Insofar as the provisions of the development plan are material to this matter, the proposal would be contrary to Hillingdon Local Plan: Part 2

⁶ Drawings noted as 'Date Prepared 11.05.21' but with same drawing names as those stated as being 'Date Prepared 18.02.21'

policy DMTC3 which seeks to protect and enhance the function of, amongst others, local shopping parades.

Other Matters

23. The terms of the lease agreement between the leaseholder and appellant is a private matter between the two parties and is not a material consideration to which I give any significant weight.

Conclusion

24. For the reasons set out, and having considered all other material considerations and matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR