
Appeal Decision

Site visit made on 25 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal Ref: APP/U5360/W/21/3268749

44 Kynaston Road, Hackney, London N16 0EU

- 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 J Gluck against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2020/4047, dated 17 December 2020, was refused by notice dated 8 February 2021.
 - The development proposed is Change of use of ground and lower ground floor from Class A1 to form 3 apartments (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the proposal has been altered from the application form to the decision notice. That on the application form adequately describes the proposal and I note that the installation of windows and doors form part of the proposals.

Preliminary Matters and Main Issue

3. 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) planning permission was previously granted for a change of use of a building from a use falling within Class A1 (shops) together with building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses).
4. Although changes have since been made to the GPDO transitional and saving provisions are in place. M.2 Conditions required the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority would be required as to a range of matters. These included (1)(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses. It is in relation to this issue that there is disagreement between the parties and it is this matter which forms the main issue.

Main Issue

5. Although there is nothing within the evidence which indicates that adequate natural light would not be available within the habitable rooms of flats 2 and 3, the same is not the case for flat 1.
6. This flat would be provided with a kitchen/dining room and bedroom at ground floor level, but would also incorporate the substantial basement, which the evidence indicates would partly be used as a bathroom but also for use as a cinema and storage.
7. The flat would not be provided with a living room. In reality, given the size of the kitchen/diner which could accommodate little more than a small kitchen and dining table, occupiers would be likely to occupy some or all of the basement space as a living room, which would comprise a habitable room.
8. The basement does not benefit from natural light. Therefore, the proposal would not make provision for adequate natural light in all habitable rooms. I do not consider that the use of the basement rooms could reasonably be conditioned as such a condition would be unlikely to be enforceable and would therefore fail the conditions tests¹.

Conclusion

9. For the reasons given above, I conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR

¹ Planning Practice Guidance Paragraph: 003 Reference ID: 21a-003-20190723.