



Appeal Decision

Site visit made on 21 December 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2022

Appeal Ref: APP/B1415/W/21/3275578

21 Sedlescombe Road North, St Leonards-on-Sea TN37 7DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 Daniel Adler, Greatglen Estates Ltd., against the decision of Hastings Borough Council.
 - The application Ref HS/PA/20/00969, dated 16 December 2020, was refused by notice dated 2 March 2021.
 - The development proposed is described on the application form as “change of use of part of a betting office to a residential dwelling”.
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), as in effect one the date of this decision, for the proposed change of use of part of a betting office to a residential dwelling at 21 Sedlescombe Road North, St Leonards-on-Sea TN37 7DA in accordance with the details submitted pursuant to Schedule 2, Part 3, Class M of the GPDO through application HS/PA/20/00969 dated 16 December 2020, and subject to the conditions set out at Schedule 2, Part 3, Paragraphs M.2(3) and W(12) of the GPDO.

Preliminary Matters

2. After the Council issued its decision, an amendment¹ was made to Schedule 2, Part 3, Class M of the GPDO, which came into effect on 1 August 2021. It is therefore necessary for me to determine this appeal in accordance with the current provisions in effect on the date of this decision, rather than those which were in effect at the time of the application².
3. The Council’s decision notice refers to ‘conditions of M.2 c and d (i), (ii) and point (f)’ of (former) Class M. The Council’s submissions clarify this refers to conditions M.2(1)(c), (d)(i), (d)(ii) and (f) of Schedule 2, Part 3 of the GPDO. Former Class M conditions M.2(1)(c) and (f) are unaltered by the amendment to the GPDO. Former Class M condition M.2(1)(d)(i) has been amended and former Class M condition M.2(1)(d)(ii) has been deleted. It is therefore unnecessary for me to assess compliance with former class M conditions

¹ The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021

² Consistent with the approach in paragraph 4 of the Schedule to the legislation referred to in footnote 1.

M.2(1)(d)(i) and (ii)³. Instead, current condition M.2(1)(d)(i) refers to a determination as to whether it would be undesirable for the building to change to a use falling within the C3 use class⁴ because of the impact of the change of use on the adequate provision of launderette services, but only where there is a reasonable prospect of the building being used to provide such services.

Main Issues

4. Taking the above into account, the main issues are: i) flooding risks in relation to the building; ii) whether it is undesirable for the building to change to a use falling within the C3 use class because of the impact of the change of use on adequate provision of services of the sort that may be provided by a launderette, but only where there is a reasonable prospect of the building being used to provide such services; and iii) the provision of adequate natural light in all habitable rooms of the proposed dwelling.

Reasons

Flooding Risks

5. The appeal site is located within Flood Zone 1 and therefore has a 'low' probability of flooding. My attention has not been drawn to any critical drainage problems at the appeal site. East Sussex County Council's SUDS team raised no objection to the proposal on the basis that there would be no increase in impermeable surfaces, but they advised that a 1 in 100 surface water flooding constraint runs directly along the site, which would prevent a bedroom at lower ground level from being acceptable.
6. The appellant has provided information which confirms the flood risk summary in respect of surface water for the area around the appeal site is low risk, and that the water depth in a flooding scenario would be expected to be below 300mm. The proposed dwelling would be located at ground floor level rather than 'lower ground level' and I saw land levels fall away to the rear of the appeal site in a south-easterly direction. The submitted plans include sections which show the lowest point of the internal floor level of the proposed dwelling would be 400mm above ground level.
7. The appellant's submissions show the water flooding constraint the Council has referred to runs outside of the appeal site, along London Road, Chatham Road, Rochester Road and Strood Road. All of these roads fall in a southern or easterly direction, sloping away from the appeal site. I have not been directed to any detailed evidence, development plan policies or guidance to suggest the appeal site may be at a higher than 'low risk'. Given the low vulnerability of the site to flooding, the context of the site, and to the scheme design, I am therefore satisfied that the proposed development would not be at any unacceptable risk of flooding.

Provision of Launderette Services

8. Former Class M condition M.2(1)(d)(i) set out that a determination would have been required on adequate provision of the sort that may be provided by a building falling within the A1, A2, or A5 use classes, which now fall within the E use class, 'or, as the case may be, a building used as a launderette, but only

³ Consistent with the approach in paragraph 3 of the Schedule to the legislation referred to in footnote 1

⁴ As defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)

where there is a reasonable prospect of the building being used to provide such services...'. I note that the phrase 'as the case may be' in the former Class M condition M.2(1)(d)(i) no longer features in the current Class M condition M.2(1)(d)(i).

9. By consequence, the current Class M condition M.2(1)(d)(i) might be read so as to imply that any change of use from any of the uses specified in paragraphs M.(a)⁵ should be assessed with reference to whether there is a reasonable prospect of the building being used as a laundrette. That appears to be one of the ways in which the main parties have interpreted the legislation when advancing their arguments at appeal, noting that the building in this instance has never been in use as a laundrette and the appellant has clarified there is no intention of it being used for such purposes.
10. Whilst understandable, that is an incorrect premise for three reasons. Firstly, laundrettes and betting offices constitute materially different uses which do not fall within specific uses classes⁶, meaning they are 'sui generis' uses and planning permission would be needed for a change of use from one to the other. Secondly, the explanatory memorandum to the amendment referred to in footnote 1 explains that the current provisions of Class M continue 'to provide for prior approval of the impact of the loss of a laundrette on the provision of such local services'. This indicates that the legislation seeks to avoid such situation, i.e. the unjustified 'loss of a laundrette' specifically. Thirdly, neither the former or current Class M condition M.2(1)(d)(i) makes specific reference to the loss of betting offices. Therefore, on a plain reading, neither former nor current GPDO Class M provisions require an assessment of the loss of a betting shop to a C3 use class on the adequate provision of such services. That reinforces my reasoning immediately above.
11. Notwithstanding that reasoning, I note that the resultant floorspace of the betting office were the appeal to be allowed would be approximately 43 square metres; that is broadly the same as a nearby laundrette referenced by the appellant at 49 Sedlescombe Road (45 square metres). I have furthermore been presented with no robust evidence indicating any intention to use the appeal site, or part thereof, as a laundrette, its suitability to such a use, or any adverse effect of the proposal on the provision of such services here. Accordingly, no conflict arises with the current (or former) requirements of Class M condition M.2(1)(d)(i).

Natural Light

12. The proposed dwelling would be served by new large ground floor windows along the side elevation of the appeal building. Two of these would serve the living room and one would serve the bedroom. All habitable rooms would therefore have access to adequate natural light. The ratio of window to wall would, in my view, be consistent with that which is typical of many properties in similar areas.
13. The new ground floor windows would face directly onto Chatham Road, which would create privacy concerns for future residents of the proposed dwelling and may lead to curtains, blinds and/or obscure glazing being fitted to those windows. However, that would be a personal choice of any future residents

⁵ Which includes betting offices at paragraph M.(a)(i)(bb)

⁶ Confirmed by Paragraph 3.(6)(c) and (n) of the UCO

which, along with any privacy issues, are not accounted for by the provisions of Class M.

Conditions

14. The planning permission granted by Schedule 2, Part 3, Class M of the GPDO is subject to the conditions set out at Paragraphs M.2 and W. of Part 3, so there is no need for me to restate those conditions in this decision. The provisions of Paragraph W. allow me to grant prior approval unconditionally or subject to additional conditions reasonably related to the subject matter of the prior approval. The Council have suggested a condition should be attached prohibiting the commencement of development until a flood risk assessment has been approved, which should then be complied with; however, there is no evidence to suggest such a condition is necessary, in the light of my reasoning above, or would otherwise meet the tests set out at Paragraph 56 of the Framework⁷.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

L Douglas

INSPECTOR

⁷ National Planning Policy Framework (2021)