



Appeal Decision

Site visit made on 8 March 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/L2250/W/21/3276358

15 Guildhall Street, Folkestone CT20 1EA

- 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 Toby Spanier against the decision of Folkestone and Hythe District Council.
 - The application Ref 21/0725/FH/PA, dated 4 March 2021, was refused by notice dated 27 May 2021.
 - The development proposed is change of use of part of retail unit to residential.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Toby Spanier against the decision of Folkestone and Hythe District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) has been amended so that from 1 September 2020, use class A1, amongst other use classes, now forms part of use class E of Part A, Schedule 2 of the UCO. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 sets out that for the 'material period' beginning 1 September 2020 and ending on 31 July 2021, any references to use classes specified in the Schedule to the UCO are to be read as meaning the use classes that applied on 31 August 2020 for the purposes of making a prior approval application.
4. Since the Council issued its decision notice, the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) has also been amended, with the former Class M of Part 3 being deleted and a new Class M and Class MA being inserted. The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 sets out that those amendments do not apply in relation to applications made under Part 3 of Schedule 2 to the GPDO prior to 21 April 2021.
5. The transitional and saving provisions of the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 ensure that until the end of 31 July 2022 the proposal should be

considered as if the amendments to the GPDO in respect of the deletion of the former Class M had not been made. I have assessed the appeal on this basis.

Main Issue

6. The main issue is the provision of adequate natural light in all habitable rooms of the proposed dwelling.

Reasons

7. The appeal building is in use as a barber shop at upper and lower ground floor levels. It is proposed to subdivide the front and rear of these levels to create a dwelling in the rear portion, accessed by an existing lower-ground floor level entrance.
8. The proposed dwelling would be very small, with one room at upper-ground floor level acting as a bedroom and living room. A shower room and a room annotated 'kitchen' on the proposed plans would be located at lower-ground floor level. The kitchen would comprise a large proportion of the dwelling and I therefore consider it extremely likely that this room would be used for more than just cooking purposes. Its size and layout in relation to the rest of the proposed dwelling indicate it would act as a multifunctional space, such as for dining and/or living space of value to any future occupant(s), in addition to space for the cooking of food.
9. Paragraph X of Part 3 of the GPDO clarifies that the phrase 'habitable room' means any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, amongst other things. I am therefore satisfied that the room annotated as a kitchen on the proposed lower-ground floor plan would constitute a habitable room in this instance on account of the particular circumstances of the proposed dwelling.
10. The appellant has advised that the lower-ground floor level entrance to the proposed dwelling would be glazed, but this is not shown on any of the plans. In any case, a glazed entrance door would provide only a small amount of natural light to the proposed lobby area which would be separated from the kitchen by a wall and door.
11. The kitchen at lower-ground floor level would be served by a canted bay window facing into what appeared to be a covered and largely enclosed former lightwell. Very little natural light is received by this window, and this would not change as the appellant has confirmed no external alterations are proposed. Adequate natural light would not therefore be provided to the kitchen at lower-ground floor level, which in this case would constitute a habitable room. This would fail to provide an acceptable standard of living conditions for any future occupant(s).
12. A large glass block window makes up most of the rear elevation wall of the upper-ground floor level. This is not evident from the plans which formed part of the application because no existing or proposed elevations were shown. The glass blocks are obscure glazed and would provide adequate natural light to the bedroom/living room of the proposed dwelling on account of the south-westerly orientation of the rear elevation and the size of the glass block window. The fence shown on proposed plans forming part of historic planning permissions did not exist at the time of my site visit and I have not been referred to any conditions which may require that fence to be erected or retained.

13. Although the proposed bedroom/living room would receive adequate natural light, I have found the room annotated 'kitchen' on the proposed lower-ground floor plan would constitute a habitable room and would not receive adequate natural light. This would fail to accord with Paragraph 130 of the National Planning Policy Framework which advises that developments should create places with a high standard of amenity for future users.

Conclusion

14. The proposal would fail to provide adequate natural light in all habitable rooms of the development and the appeal is dismissed.

L Douglas

INSPECTOR