



Appeal Decision

Site visit made on 10 May 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Appeal Ref: APP/A5270/W/21/3287537

110-112 Beaconsfield Road, Southall, Middlesex UB1 1DR

- 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 Johal, Beaconsfield Enterprises Ltd against the decision of the Council of the London Borough of Ealing.
 - The application Ref 214467PABC3, dated 26 July 2021, was refused by notice dated 20 September 2021.
 - The development proposed is described as 'part conversion of existing groundfloor stores to rear, ancillary to retail units to front, into two self-contained one person studio flats. Scheme includes two new windows on the rear elevation and two walk-over frosted roof-lights to provide adequate light to the habitable space'.
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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) for 'part conversion of existing groundfloor stores to rear, ancillary to retail units to front, into two self-contained one person studio flats. Scheme includes two new windows on the rear elevation and two walk-over frosted roof-lights to provide adequate light to the habitable space' at 110-112 Beaconsfield Road, Southall, Middlesex UB1 1DR in accordance with the application ref 214467PABC3 dated 26 July 2021 and the plans and details submitted with it including plan Nos 20/046_P1, 20/046_P2, 20/046_P3, 20/046_P4, 20/046_P5, 20/046_P6, 20/046_S0, 20/046_S1, 20/046_S2, 20/046_S3, 20/046_S4, 20/046_S5, 20/046_S6 and Location Plan.

Preliminary Matters

2. The Council's decision notice describes the proposal as 'part change of use of ground floor retail unit (A1 use class) to two residential self-contained flats (C3 use class) (Class M, 56-day Prior Approval Process)'. However, the appellant advises that no agreement was given to the change from the description stated within the original application. I have therefore used the description given on the application form in the banner heading and my formal decision above.
3. The appeal submission includes an Internal Daylight Assessment report dated 19 October 2021 ('the IDA') which was not before the Council at the time of its decision. The 'Procedural Guide: Planning Appeals - England' sets out that 'the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the

local planning authority, and on which interested people's views were sought'. In this case, the IDA provides further information on light levels within the appeal building. It does not alter the development proposed, and the Council was able to comment on the IDA as part of its evidence, albeit that it has not done so. Given also the nature of the evidence which relates to the internal environment of the development, I am satisfied having regard to the 'Wheatcroft' principles¹ that my consideration of the IDA would not prejudice the interests of any party. I have therefore taken it into account.

Background and Main Issue

4. The appeal relates to an application made for Prior Approval pursuant to Class M of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). At the time of the application, Class M covered change of use from shops (Class A1), financial and professional services (Class A2), takeaways (Class A5), betting offices, pay day loan shops or laundrettes (Sui Generis Use); or a mixed use combining use as a dwellinghouse with use as a betting office, pay day loan shop or laundrette or a shop or financial and professional service use; to dwellinghouses; together with building operations reasonably necessary for the conversion.
5. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and made significant amendments to the previous system of use classes under the Use Classes Order 1987 (as amended) ('the UCO'). Relevant to this appeal, the previous shops (Class A1) use was incorporated with other uses in a new commercial, business and service (Class E) use. The GPDO was subsequently amended, including by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 ('the GPDO Amendment Order'). Under the GPDO Amendment Order, Part 3 Class M would no longer be applicable to shops. Instead, a new permitted development right at Part 3, Class MA provides for the change of use from commercial, business and service use (Class E) to residential use (Class C3). However, the limitation at MA.2(3) stipulates that an application for prior approval for development under Class MA may not be made before 1 August 2021. The appeal application was made before this date, and would not therefore be permitted under Class MA.
6. Nevertheless, transitional provisions are included at Article 13 of the GPDO Amendment Order. Relevant to the appeal proposal, the provisions at (5) apply to development which was permitted under a provision of Schedule 2 to the GPDO as the provision had effect immediately before 1st August 2021 ('the previous permission'); is not permitted under any provision of that Schedule as it has effect on or after 1st August 2021; and relates to land or a building which, immediately before 1st August 2021, was used for a purpose which made the land or building eligible for the previous permission. In such cases, the provision at 5(2) sets out that the GPDO has effect until the end of 31 July 2022 as if the amendments made by the Order had not been made. Where the GPDO has effect in accordance with 5(2), the provision at 5(3) further stipulates that a reference in the GPDO to a use or use class specified in the UCO is a reference to that Order as it had effect on 30 August 2020.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

7. I have determined the appeal accordingly, with regard to Class M as it had effect prior to the amendments made by the GPDO Amendment Order.
8. Development permitted by Class M is subject to limitations which are specified at paragraph M.1, and conditions which are set out at paragraph M.2. The conditions at M.2 establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters, including at part (1)(f) 'the provision of adequate natural light in all habitable rooms of the dwellinghouses'. In determining such an application, paragraph W(10) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
9. Having assessed the proposal, the Council has raised an objection in relation to the prior approval matter concerning the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has not argued that the proposal fails to comply with Class M in other respects or that other prior approval matters would be unacceptable, and I have no compelling reasons to find otherwise.
10. The main issue is therefore whether or not prior approval should be granted having regard to the requirement for the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

11. The appeal proposes two studio flats within the rear part of the ground floor level of 110-112 Beaconsfield Road. As part of the proposal, a frosted rooflight would be inserted above each flat. In addition, two windows (one to each flat) would replace an existing roller shutter and door facing onto an access that runs between the side of 131 Abbots Road and the rear of No 110-112 and adjacent buildings.
12. The appellant's IDA was carried out in accordance with the Building Research Establishment ('BRE') guidance Site Layout Planning for Daylight & Sunlight – A Guide to Good Practice 2011. It indicates that the proposed rooflight and windows would provide for Average Daylight Factor ('ADF') levels of 3.89% for Flat 1 and 3.76% for Flat 2. In both cases, these ADF results would comfortably exceed the 2% that is recommended by the BRE guidance. I can see no firm reason from the evidence before me to doubt that there would be suitable levels of daylight for the flats, and I conclude that there would be adequate natural light to all habitable rooms of the dwellinghouses.

Other Matters

13. The Council's officer report includes reference to a failure to provide a high quality or attractive outlook for occupiers of the flats, but this is not a consideration that is relevant to an assessment under the provisions of Class M of Part 3, Schedule 2 of the GPDO.
14. I have also had regard to representations made by interested parties, including that the proposal would increase use of the access to the rear of the site. However, any uplift in usage would be relatively small given the scale of the

proposal, and I have no substantive evidence to indicate that the proposal would cause unacceptable harmful effects on traffic or highways. I also have no firm reason to consider that the proposal would cause harm to the adequate provision of shops in the area.

15. Concerns regarding the number of occupiers on the site, demand for local services, noise, and provision for refuse and litter are outside the scope of an assessment under the provisions of Class M of the GPDO. The living conditions of neighbouring occupiers is similarly not a relevant prior approval matter, but the proposal would not in any event alter the scale of the building, and would not therefore result in additional loss of light or outlook for neighbouring occupiers. Given the ground-floor level of the proposed windows and their relationship with surrounding buildings, I am also satisfied that the development would not cause unacceptable overlooking. The potential for future proposals on neighbouring sites is not a consideration that is relevant to the assessment of the current appeal which I have considered on its own merits.

Conditions

16. Development under Class M is permitted subject to conditions at Paragraph M.2.(3) which include that the development must be completed within a period of 3 years starting with the prior approval date; and that the building which has changed use is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the UCO and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse. The development must also adhere to the provisions at Paragraph W(12) of Part 3 of Schedule 2 to the GPDO which outline that the development must be carried out in accordance with the approved details.
17. Paragraph W(13) of Part 3 of Schedule 2 to the GPDO allows additional conditions to be imposed, but these must be reasonably related to the subject matter of the prior approval. Given the limited scale of the works proposed and the circumstances of the appeal site, I am not persuaded that a condition suggested by the Council's 'Pollution Technical (EH)' consultee to require a demolition method statement and construction management plan would be necessary in the interests of any of the prior approval matters. I have not therefore imposed it.

Conclusion

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

J Bowyer

INSPECTOR