



Appeal Decisions

Site visit made on 9 May 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal A Ref: APP/D5120/W/21/3279640

25 High Street, Sidcup DA14 6ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr A Essa of Mercury Properties Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/00269/PRIOR, dated 4 February 2021, was refused by notice dated 31 March 2021.
 - The development proposed is change of use part of solicitors offices to residential A2 – C3.
-

Appeal B Ref: APP/D5120/W/21/3279662

25 High Street, Sidcup DA14 6ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr A Essa of Mercury Properties Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/01191/PRIOR, dated 2 April 2021, was refused by notice dated 27 May 2021.
 - The development proposed is change of use and conversion A1/A2 to C3.
-

Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for costs

3. An application for costs was made by Mr A Essa of Mercury Properties Ltd against the Council of the London Borough of Bexley in relation to Appeal A. This application is the subject of a separate decision.

Preliminary Matters

4. There are two appeals relating to this site as set out above. Whilst the descriptions of development are slightly different, the drawings for both appeals are the same. Although I have considered each on its individual merits, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

5. The original application form for Appeal B specifies the site address as '25 Sidcup High Street'. The application form for Appeal A states that the site address is '25 High Street'. For consistency I have used the latter address in the banner heading above for both appeals.
6. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. Various classes, including A1, were replaced by Class E in Part A of Schedule 2. Class MA now refers to 'commercial, business and service uses to dwellinghouses'.
7. Since the Council refused the prior approvals, the GPDO was amended and the changes took effect on 1 August 2021. This resulted in a change to Schedule 2, Part 3, Class M. As a result of this change, the development is no longer permitted by any class of the GPDO. However, given that the applications for prior approval were made before 1 August 2021, and the building was used for a purpose within Class A2 prior to this date, under the transitional and saving provisions for development which is no longer permitted, the development should be considered as if the amendments to the GPDO were not made up until 31 July 2022. Therefore, I have determined the appeals under Class M of the GPDO and its reference to Class A2 use.

Main Issue

8. The main issue in both appeals is whether the proposal meets the criteria set out in Schedule 2, Part 3, Class M of the GPDO so as to benefit from permitted development rights.

Reasons

9. The appeal site comprises of a ground floor unit formerly used as a solicitor's office. It is currently vacant. The building is part two storey and part single storey and it has been extended to the rear such that it occupies most of the appeal site apart from a small courtyard to the rear. The proposals would create three self-contained flats at the rear of the building with associated internal and external alterations to facilitate the change of use. The front of the ground floor area would be retained as a smaller solicitor's office.
10. The ground floor falls within Use Class A2 and benefits from the permitted development right under Class M(a) of the GPDO. The area of dispute is whether the works proposed to the rear of the property fall outside the parameters of building operations reasonably necessary to convert the building to a use falling within Use Class C3 (dwellinghouses) as set out in Class M(b).
11. The appellant has referred to the Hibbitt judgement¹, and to Paragraph 105 of the Planning Practice Guidance (the PPG), which provides clarification on what works are permitted under the Class Q permitted development right for change of use from an agricultural building to residential use.
12. The plans indicate the removal of a large part of the rear wall of the building. The Council says that approximately 70sqm of floorspace at the rear of the building would be demolished as part of the proposals, which is not disputed by the appellant. That represents a significant proportion of the ground floor area of the building and amounts to substantial demolition. New walls of significant

¹ Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

length would be constructed to the front and sides of Flats 2 and 3 and new windows and doors would be created. Flat 1 would effectively be in a standalone building separate to Flats 2 and 3 and a third separate structure would be formed to provide a stairwell and lift.

13. The new central courtyard with an atrium above would occupy a considerable length of the building. It would appear to require the removal of a significant section of the existing roof and its replacement with glazed light wells. Moreover, given the extent of demolition it is unclear whether the remaining part of the roof, including that section over Flats 2 and 3, would be retained or replaced with a new roof.
14. I acknowledge that the development would not extend beyond the confines of the existing building. However, the degree of the proposed works would be cumulatively so extensive that they would exceed those reasonably necessary for the ground floor of the building to function as three residential units.
15. I have had regard to the appeal decision at 99 Blatchington Road, Hove², where the Inspector concluded that the scope of works would be minor in nature and reasonably necessary to provide a quality home and reasonable living conditions. However, I do not have the full circumstances of that development before me. Consequently, it is not possible for me to make direct comparisons between the appeal schemes and 99 Blatchington Road. Moreover, for the reasons identified above, the works proposed as part of the appeal schemes would not be minor in nature.
16. For the above reasons, I conclude that the development proposed does not comply with the conditions that are applicable to the permitted development that is enabled by Class M of Part 3 of Schedule 2 of the GPDO. The development is not, therefore, permitted development.
17. Given my conclusion above, it is not necessary for me to consider whether prior approval is required in respect of the various matters that are set out at Paragraph M.2(1) of Class M of Part 3 of Schedule 2 of the GPDO.

Conclusion

18. For the above reasons, and having taken all matters into account, I conclude that both appeals should be dismissed.

M Ollerenshaw

INSPECTOR

² Appeal Ref: APP/Q1445/W/16/3142668