



Appeal Decision

Site visit made on 17 May 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities

Decision date: 20th June 2022

Appeal Ref: APP/V5570/W/21/3286499

481 Hornsey Road, Islington, London N19 3QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Samir Yzdani against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/1845/PRA, dated 24 June 2021, was refused by notice dated 31 August 2021.
 - The development proposed is this proposal is for Prior Approval for change of use to the GF retail unit on No.481 Hornsey Road from Class A1 [Retail] to Class C3 [Residential] under The Town and Country Planning (General Permitted Development) (England) Order 2015 Class M.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Class M of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) planning permission is granted for a change of use of certain uses, including retail, to dwellinghouses, subject to limitations and conditions.
3. As detailed within the GPDO, development under Part 3, Class M is permitted subject to the condition that before beginning the development, the developer must apply for prior approval. The Local Planning Authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.
4. The provisions of the GPDO require the Local Planning Authority to assess the development proposed on the basis of a limited number of considerations. There are effectively two stages to assessment – the first being eligibility. The Council conclude that the proposal is eligible to be considered under the prior approval process and have not raised any conflict with the conditions set out in the GPDO. There is no evidence to conclude differently in that regard. They have however, raised concerns in respect of the impact on the sustainability of the Hornsey Road North Local Shopping Area under M.2.(1)(d)(ii). The consideration of the appeal shall therefore focus on this matter.
5. The Council have referred to a number of development plan policies. As the principle of development has been established through the grant of permission by the GPDO, prior approval appeals are not determined on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004. However, I have taken the

development plan policies into account insofar as they are relevant to the prior approval matter under consideration.

Main Issue

6. Whether the area is a key shopping area and, if so, whether prior approval should be granted having regard to the impact of the change of use on its sustainability (M.2.(1)(d)(ii)).

Reasons

7. The appeal building is a terraced property comprising a shop with shop front at ground floor, with basement storage level and residential uses on the upper two floors. The parties agree that the shop, and the adjoining shop at No 483 within the same ownership and subject of a separate similar appeal¹, is within the 'Hornsey Road Local Shopping Area' as so defined in Islington's Local Plan: Development Management Policies (2013) (DMP).
8. Under M.2.(1)(d), consideration can be given to what the impact of the change of use would be on:
"(i) adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area".
9. It is acknowledged by the parties that "key shopping area" is not defined in the GPDO and that the sustainability of such an area is a largely subjective matter.
10. The DMP sets out that Islington has four town centres, two major (Angel and Nags Head) and two district (Archway and Finsbury Park). The DMP then states that there are a number of "Local Shopping Areas" (LSAs) which complement the role of the town centres which can provide an important shopping function but also contain a range of other businesses such as banks, estate agents, post offices, dry cleaners, solicitors, cafés and takeaways. There are 40 such LSAs within the Borough.
11. The Hornsey Road North LSA allegedly comprises 42 premises. Though there are some vacant units, it contains a typical mix of useful shops and services including, but not limited to, cafes, takeaways, public houses, convenience shops, heating and plumbing engineers, beauticians, shops selling goods such as carpets, whole foods and clothes. The appeal building is currently occupied by a beauty salon.
12. There is a relatively high number and widespread distribution of LSAs within the Borough. Despite this, that they have a designation at all suggests to me that they play a noteworthy role in the retail hierarchy which cannot be simply dismissed. Therefore, despite that the terminology differs, in my view, an LSA is a 'key shopping area' for the purposes of the assessment under Part M of the GPDO, particularly one of the size, character and format of Hornsey Road North.

¹ Appeal Ref: APP/V5570/W/21/3286500

13. Despite the site's location within an LSA, or, in my view, a 'key shopping area', the change of use of retail premises is not automatically precluded, rather, consideration should be given to the sustainability of that particular area.
14. From my observations, the collection of 42 retail/commercial premises are within a relatively compact, almost continuous retail frontage that extends along both sides of the road. The appeal premises is relatively centralised on the western side of the street, rather than in a more peripheral location. It is in fact book-ended between units which are occupied by currently active businesses, though it is suggested that the immediately adjoining units on one side are currently vacant.
15. Whilst the loss of the unit would not result in there being a scarcity of local shops, I consider its permanent loss from its position as an integral part of the retail frontage would undermine the coherence of the whole. It would also reduce the range of businesses present within the shopping street, driving residents to town centres further away. Additionally, the loss of the unit and its adjoining neighbour would be likely to undermine business confidence and investment to the area, further undermining the future prospects of the LSA operating successfully. Whilst perhaps in isolation the current beauty business's economic prospects appear to have been challenging of late, it is not alleged that it has already closed or that there would be no prospect of the unit being in demand for other similar purposes. Even if there are other similar businesses dispersed across the wider area, the preferable outcome would be for them to be within the LSA to maximise its vitality and viability.
16. The appellant alleges that if a shop were needed in the future, then one of the already-vacant premises could be used for such a purpose. However, that appears to me to be less logical than retaining an ongoing business in an existing retail unit. The condition of any such already-vacant units and their respective locations within, or in relation to the LSA may be contributing factors as to whether any changes are permitted in the future. However, there is an absence of cogent evidence before me to suggest that those units could not reopen for retail or other town centre uses in any event.
17. I have considered the evidence on both sides, and do not agree that there is a precedent that indicates this scheme should be permitted. Other schemes have either been outside of the LSA or in a more peripheral position within it, or have avoided the loss of the retail unit itself. For the foregoing reasons, the appeal scheme would be harmful to the sustainability of the key shopping area.

Other Matters

18. I note that the proposal involves the retention of a shopfront appearance of the premises, and that the Council find this aspect acceptable. However, this matter does not change my findings on the main issue in this appeal.

Conclusion

19. The proposal would not comply with M.2.(1)(d)(ii) and thus, prior approval cannot be given for the proposal and the appeal is therefore dismissed.

Hollie Nicholls

INSPECTOR