
Appeal Decision

Site visit made on 5 July 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2022

Appeal Ref: APP/K5600/W/22/3293472

305 Brompton Road, London SW3 2DY

- 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) (England) Order 2015, as Amended.
 - The appeal is made by Spurgeons Children Charity against the decision of The Royal Borough of Kensington and Chelsea.
 - The application Ref PA/21/04806, dated 15 July 2021, was refused by notice dated 27 August 2021.
 - The development proposed is change of use of first floor (Class A1) to residential use (Class C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO) for a change of use of first floor (Class A1) to residential use (Class C3) at 305 Brompton Road, London SW3 2DY in accordance with the terms of application ref PA/21/04806, dated 15 July 2021 and the plans submitted with it, subject to the standard conditions set out in Part 3 paragraphs M.2(3) of the GPDO.

Preliminary Matters

2. In the interests of conciseness, I have taken the description of the proposal from the Council's decision notice.
3. The principle of development is established by the GPDO. The Council's statement of case cites Policy CT1 of its Local Plan (2019). The provisions of Schedule 2, Part 3, Class M of the GPDO do not require regard to be had to the development plan. While I have not been provided with a copy of this policy, the appellant has not disputed that it requires that all new additional residential development will be permit free. I have had regard to this only insofar as it is a material consideration in connection with the main issue.
4. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021 came into force on 1 August 2021 but was subject to saving and transitional provisions. Class M is subject to condition M.2(3)(c) that states that where the proposed development includes a change of use of a building from a use falling within Class A1 or Class A2 of the Use Classes Order, the developer must apply for a determination under sub-paragraph (1) or (2) on or before 31 July 2021. Furthermore, Class MA is subject to condition MA.2(3) which states that an application for prior approval for development under Class MA may not be made before 1 August 2021. As such, it has been

necessary to determine this appeal under the provisions of Class M of the GPDO.

5. During the appeal process, the appellant has provided an amended Unilateral Undertaking dated 19 July 2022. The Council has been provided with an opportunity to comment and I have taken the comments received into consideration under the main issue.

Background and Main Issue

6. Schedule 2, Part 3, Class M of the GPDO permits the change of use of a building from a use falling within, amongst other classes, Class A1 (shops) to a use falling within Class C3 (dwellinghouse) of what was the Schedule to the Town and Country Planning (Use Classes) Order 1987 (UCO). This is subject to criteria under paragraph M.1 and conditions under paragraph M.2. The main parties agree that the proposal meets the requirements of Paragraph M.1 of the GPDO. As such, it constitutes Permitted Development under Class M, subject to the prior approval of the matters listed at paragraph M.2 of the GPDO.
7. The Council's sole concern relates to paragraph M.2 (1) (a). Accordingly, the main issue is:
 - the transport and highways impacts of the development.

Reasons

8. Brompton Road forms part of the well-trafficked A308. The appeal site does not have any on-site parking. There is a single yellow line and 'No loading' signs to the application site side of the road. A limited number of resident permit holder spaces are located on the opposite side of Brompton Road. The site is well served by public transport and the evidence before me indicates that the site has a high Public Transport Accessibility Level (PTAL) rating of 6a.
9. The Council's submissions confirm that the whole Borough is subject to a Controlled Parking Zone. Whilst I appreciate my site visit provided only a snapshot of the parking situation in the area, I observed that there were high levels of on-street parking demand. It is understandable that the Council would want to ensure that any new residential development does not add to parking stress in the area.
10. The Council has confirmed that a legal agreement which prevents future occupiers of the residential unit from being eligible to obtain a parking permit for use within the Borough would overcome its concerns. Given the parking constraints identified and that the site is highly accessible by public transport link, I agree that this would be reasonable. I also concur that a legal agreement would be the most appropriate means of ensuring that this requirement was secured with precision and enforceability.
11. The Council confirmed within its statement of case that if the appeal is allowed that this should be subject to the draft s106 agreement provided with the appellant's appeal submission being formally signed. Following this, a signed Unilateral Undertaking (UU) dated 24 June 2022, which included similar provisions for the development to be permit-free, was provided. However, there were errors in the drafting of that agreement including amongst other things an erroneous reference to an unrelated application.

12. The appellant has now provided a revised UU dated 19 July 2022 (revised UU) which addresses the previous drafting errors. Having seen the revised UU, the Council has confirmed it has no further comments to make. I am satisfied that the revised UU meets the relevant tests at Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations. As a result of the provisions within the revised UU, the transport and highways impacts associated with the proposal would be negligible or zero.
13. I conclude, the proposal would satisfy paragraph M.2 (1) (a) of the GPDO.

Other Matters

14. The Council's delegated report confirms that the proposal would be acceptable in terms of all other requirements under Part M.2. From what I have seen, I find no reason to conclude differently. In reaching this finding, I am mindful of the fact that the Council in accessing the proposal against paragraph M.2 (1) (e) suggested that there would be no alteration to the front of the building. The plans provided show that the existing double entrance on the front elevation would be changed to a single entrance to provide a separate residential access and that a new double entrance and large window would be installed for the commercial unit. In any case, I am satisfied that the proposals would be sympathetic to the design and external appearance of the building and therefore raise no issues in this regard.
15. The UCO has been amended so that, from 1 September 2020, use classes A1, A2 and B1(a) fall within class E of Part A, Schedule 2 of the UCO and planning permission is not required for a change of use between any use falling within class E. For the avoidance of doubt, this amendment has had no bearing on my consideration of this appeal. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 provide that if any relevant planning application refers to use classes as specified on 31 August 2020, it shall be determined by reference to those classes.

Conditions

16. Development is permitted under Class M subject to paragraph M.2(3)(a) and (b) require that development commences within three years from the date that prior approval is given and that the building is used for Class C3 use only. No further conditions are considered to be necessary.

Conclusion

17. I therefore conclude that the appeal should be allowed and prior approval should be granted.

M Russell

INSPECTOR