



Appeal Decision

Site visit made on 8 August 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022

Appeal Ref: APP/T0355/W/21/3276376

1A Cordwallis Road, Maidenhead SL6 7DQ

- 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 Mr Ed Sukkar on behalf of Rakkus Ltd against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/01029/CLASSM, dated 31 March 2021, was refused by notice dated 27 May 2021.
 - The development proposed is described on the application form as: 'Conversion with associated external works to form 4 dwellings'.
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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) (the GPDO) for change of use of part of retail unit to x4 dwellings (C3) with associated works at 1A Cordwallis Road, Maidenhead SL6 7DQ in accordance with the terms of the application, Ref 21/01029/CLASSM, dated 31 March 2021, subject to the various standard conditions laid out at Paragraph M.2 to Part 3 of the GPDO and the additional conditions set out at the end of this decision.

Application for costs

2. An application for costs was made by Mr Ed Sukkar on behalf of Rakkus Ltd against the decision of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate decision.

Preliminary Matters

3. The Borough Local Plan 2013-2033 (the BLP) was adopted by the Council in February 2022. The main parties have had the opportunity to make observations upon any relevance of this to the outcome of the appeal. Even so, the relevant prior approval provisions do not require regard to be had to the development plan.
4. For the purposes of my determination, I have used the description of development given on the Council's Decision Notice and the appeal form, as opposed to that stated on the application form. This is because it correctly identifies that a change of use of part of the appeal building is under consideration. I have omitted reference to Class E1 for reasons explained in the following paragraph.

5. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and had the effect of amending and simplifying the system of use classes. A use formerly falling within Class A1 now falls within Class E. Nevertheless, the Council's determination in this case was applied for in advance of the relevant 31 July 2021 deadline set out under paragraph M.2(3)(c) to Part 3 of the GPDO. This means that transitional provisions apply, such that, notwithstanding mentions made to Class A1 uses, the appeal should be determined in accordance with the GPDO that was in force immediately before 1 August 2021. I shall consider the appeal on this basis.

Main Issues

6. The main issues are:
- Whether or not the proposal would be permitted development under Schedule 2, Part 3, Class M of the GPDO, having particular regard to the provisions of paragraph M.1 (c) and (d); and
 - Whether or not it would be undesirable for a part of the building to change to a use falling within Class C3 (dwellinghouses), having particular regard to the impact of the change of use on the adequate provision of services.

Reasons

Whether or not permitted development

7. Paragraph M.1 of the GPDO sets out various requirements that, if not met, result in development not being permitted by Class M. Parts (c) and (d) of paragraph M.1 dictate that the cumulative floor space of the existing building changing use must not, even in combination with previous development under Class M, exceed 150 square metres.
8. The Council has accepted that the floor space stated for each individual dwelling is correct, and that this cumulatively amounts to just under 150 square metres. I have no reason to disagree.
9. The external courtyard and patio areas that are proposed, whilst reliant upon partial demolition occurring, would not count towards any calculation of floor space. Furthermore, the proposed ground floor plan¹ indicates that access to internal hallway, staircase and landing areas, as well as to a store situated off the hallway, would be obtainable to any future occupier of the retail unit intended to be retained, and there is nothing before me to indicate that access would be controlled or prohibited. On this basis, these communal areas would not be solely accessible to future residential occupiers and would not comprise floor space changing use to Class C3 (dwellinghouses). As such, the relevant 150 square metre threshold would not be exceeded.
10. For the above reasons, having particular regard to the provisions of paragraph M.1 (c) and (d), the proposal would be permitted development under Schedule 2, Part 3, Class M of the GPDO. The main parties agree that the proposal complies with all other requirements of paragraph M.1, and I have no reason to disagree.

¹ Ref 02 D

Impact upon adequate provision of services

11. The provisions of paragraph M.2(1)(d) require the Local Planning Authority to assess whether it is desirable for the building to change to a use falling within Class C3 because of the impact of the change of use on adequate provision of services of the sort that may be provided by a building, but only where there is a reasonable prospect of the building being used to provide such services. The relevant use classes referenced in the GPDO, in accordance with transitional and saving provisions², include A1 (shops).
12. The appeal building is situated in an out-of-centre and predominantly residential location. It provides retail floor space across its ground and first floor levels that was last occupied for the purposes of retailing household appliances. The building has lain vacant since at least July 2019. The proposal entails a change of use of most of the building to provide four self-contained flats. A small retail unit is intended to be retained at ground floor, to front Cordwallis Road.
13. The proposal would significantly curtail the building's retail capacity and I am unaware of any broadly comparable retail unit (in terms of its size and format) nearby. It thus follows that, notwithstanding the building's out-of-centre location, services of the sort that could be provided by the building would no longer remain as a consequence of the proposal. However, the building has lain vacant for in excess of three years and various site constraints avail, including those associated to access and parking. These factors offer a clear indication that any prospect of the building in its present form being actively used for retail purposes, or indeed for wider commercial/business/service purposes, is limited. This is even when noting a low level of premise vacancies locally.
14. The Council has referenced the absence of robust marketing material. Indeed, I do not have before me full details of how the building has been marketed since last occupation. However, there is no explicit requirement set out in the GPDO for marketing evidence to be submitted to demonstrate there is no reasonable prospect of a building being used. I have noted reference by the Council to an appeal decision³ in Windsor where a lack of marketing evidence contributed to an unsuccessful outcome. However, any proposal must be considered upon its own individual merits. It is pertinent that the building that is the subject of this appeal has lain vacant for an extended period and that a retail/commercial presence would be retained alongside the change of use applied for.
15. The Council has referred to guidance within its previously emerging BLP that explains its expectations for marketing evidence. However, it is unclear in what circumstances this guidance should be applied. Moreover, it has not been demonstrated how such guidance is directly applicable to an application for a determination as to whether prior approval is required. I also note that the Council has confirmed that it does not consider that the BLP's adoption has any implications for this appeal.
16. The restricted nature of the shop to remain dictates that the range of realistic future operations is narrow. I accept that there are no guarantees that a

² SI 2021/814 Article 13 and associated Schedule

³ APP/T0355/W/15/3141411

tenant for this small shop would be forthcoming. Even so, a potential commercial function, albeit significantly reduced, would be retained, which could realistically assist to some degree with providing retail services for the local community.

17. All matters considered, having particular regard to the impact of the change of use on the adequate provision of services, it would not be undesirable for a part of the building to change to a use falling within Class C3 (dwellinghouses).

Other Matters

18. The provisions of paragraph M.2(1)(a) require the Local Planning Authority to assess whether the transport and highways impacts of the development would be acceptable. As confirmed in the Council's Officer Report, the proposal, although involving the retention of a small shop, would reduce the anticipated parking demand associated with the building. This remains relevant despite my above finding that any prospect of the building being used in its present form is limited.
19. A submitted Highways Report (April 2021) (the HR) contains a parking survey that was undertaken over two nights, and thus during peak parking hours, in February 2021. The results demonstrated the availability of on-street capacity to address any potential parking shortfall. This is despite various on-street parking restrictions that apply local to the site. Furthermore, the HR identifies that, when compared to the existing lawful use that applies, likely traffic on the highway network would reduce.
20. Moreover, the Highway Authority has raised no objection, which is a matter of importance as they are responsible for the safety of users of the local highway network. As such, whilst I have duly noted references made by an interested party to Cordwallis Road being used by motorists travelling at high speed, and to instances of inconsiderate parking, I am satisfied that, subject to the imposition of relevant conditions, the transport and highways impacts of the development would be acceptable.
21. The provisions of paragraph M.2(1)(f) require the Local Planning Authority to assess the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has identified adequate provision in the case of each proposed flat. I have no reason to disagree. Whilst an interested party has raised specific concerns with respect to Flat 4, the proposed ground floor layout illustrates that the main living area and bedroom would be served by window openings facing on to a courtyard to be created to the rear. I am satisfied that the provision of adequate natural light in all habitable rooms would be achieved.
22. Interested parties have raised overlooking concerns related to the insertion of new window openings. Further, the need for four additional flats has been questioned and the potential for disruption to be caused by the conversion works has been raised. However, unlike where an application for planning permission has been submitted, my considerations are necessarily limited to the provisions of Schedule 2, Part 3, Class M of the GPDO and, most particularly, the relevant matters listed under paragraph M.2(1).

23. From the evidence before me, the scheme would not have an adverse impact or cause undue risks in the context of any of the relevant matters listed under Paragraph M.2(1). This indicates that prior approval should be granted.

Conditions

24. Paragraph W(13) to Part 3 of the GPDO allows for the imposition of conditions reasonably related to the subject matter of the prior approval. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments where necessary for clarity and consistency purposes. At paragraph 1 of this decision, I have referenced the various standard conditions that apply as laid out at paragraph M.2 to Part 3 of the GPDO. This includes a three-year time limit for completion.
25. Paragraph W(12) to Part C sets out that development must be carried out in accordance with the details approved. In this sense, a condition listing the approved plans is reasonable to impose in the interests of certainty.
26. In the interests of highway safety, conditions are reasonable and necessary that secure the marking out and subsequent retention of on-site parking spaces (I note that the area in question is already hard surfaced), the provision of covered and secure cycle parking facilities, and full details of the refuse storage facilities to be installed (to ensure that the site is suitably serviceable for the purposes of refuse collection). As the building already has a lawful retail use, I have used 'prior to the first occupation of any dwelling hereby permitted' as the appropriate trigger point for compliance in the case of each condition.
27. I have attached a further condition in the interests of highway safety, to ensure that a reduction to a section of the existing eastern boundary wall is made in accordance with details specified upon the approved Block Plan. This would offer a marked and genuine improvement in visibility terms.

Conclusion

28. For the reasons set out above, the appeal is allowed and prior approval is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 06; 02D; 04A; 05.
- 2) Prior to the first occupation of any dwelling hereby permitted, vehicular parking spaces shall be marked out as depicted on approved plan Ref 05, and thereafter shall be retained at all times solely for the purposes of parking and manoeuvring vehicles.
- 3) Prior to the first occupation of any dwelling hereby permitted, covered and secure cycle parking facilities shall be provided in accordance with details to have first been submitted to and approved in writing by the Local Planning Authority. Thereafter, the facilities shall be retained at all times solely for the purposes of parking cycles.
- 4) Prior to the first occupation of any dwelling hereby permitted, refuse and recycling storage facilities shall be provided in accordance with full details to have first been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved facilities shall be retained at all times.
- 5) Prior to the first occupation of any dwelling hereby permitted, in accordance with details depicted upon approved plan Ref 05, the existing front boundary wall to the eastern side of the site shall be reduced to a height of 0.6 metres for a distance of 1.5m measured back from the highway and shall be retained as such at all times thereafter.