



Appeal Decision

Site visit made on 1 August 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal Ref: APP/Q5300/W/21/3279277

323 Baker Street, Enfield EN1 3LF

- 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 Akiva Schreiber against the decision of the Council of the London Borough of Enfield.
 - The application Ref 21/01045/PIA, dated 18 March 2021, was refused by notice dated 13 May 2021.
 - The development proposed is for a change of use of retail use (Class A1) to residential use (Class C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Akiva Schreiber against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Preliminary Matters

3. In addition to this appeal, I have considered an appeal for a very similar development proposal at the next door property, 321 Baker Street (Appeal Reference APP/Q5300/W/21/3279272), which was refused for the same reasons.

Main Issues

4. The main issues are whether the proposal:
 - would be Permitted Development under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), with particular regard to the loss of commercial floorspace; and,
 - would have acceptable Transport and Highways impacts.

Reasons

5. The appeal building is located on the eastern side of Baker Street in a short parade, Nos 319-323, which is said to be part of the Baker Street Local Centre.

Commercial Floorspace

6. In 2018, Prior Approval was granted on appeal¹ for a change of use at 321 Baker Street from Class A1 Shop to one Class C3 flat under Schedule 2, Part 3, Class M of the GPDO. Later in 2018 the Council stated that Prior Approval for a change of use at the next door property, 323 Baker Street from Class A1 Shop to one Class C3 flat under Schedule 2, Part 3, Class M of the GPDO was not required².
7. In determining that Prior Approval was not required at 323 Baker Street the Council accepted that it complied with the requirements of Schedule 2, Part 3, Class M of the GPDO, including with regard to any conditions or limitations required by it, as did the Inspector in the appeal case.
8. Since this time various Prior Notification and Prior Approval applications have been made and determined with regard to Nos 321 and 323, which are listed in the Council's officer report for each property.
9. The Council states that in 2019, Prior Approval was refused for a change of use at No 323 from Class A1 to 4x Class C3 dwellings³ for almost identical reasons to the current appeal proposal. A similar proposal at No 321⁴ was also refused Prior Approval by the Council again for almost identical reasons as the current appeal proposal at No 321. However, I am not familiar with these proposals, which are not in the evidence before me.
10. The Council states that officers visited Nos 321 and 323 on 27 September 2019, just before Prior Approval was refused at both addresses. At this time, it was noted that building works had commenced. However, it is not clear from the officer report whether these works were authorised, and if so, the reference numbers of the approvals that authorised them.
11. The Council also states that these works had ceased by March 2021 but that Nos 321 and 323 had not been returned to a condition considered suitable for commercial purposes. It is not clear from the evidence that the existing lawful use of the appeal property would be such that the appeal proposal would be permitted development under Schedule 2, Part 3, Class M, Paragraph M.(a) of the GPDO.
12. However, this is not a matter of dispute between the parties based on the current and 2019 Prior Approval refusals, all of which are based in part upon the loss of commercial floorspace identified under Schedule 2, Part 3, Class M of the GPDO.
13. The issue of what the existing building is and whether it includes both 323 and 321 Baker Street is at the heart of the matter. The appellant has provided separate, dated Official Titles and Land Registry entries for both 323 Baker Street and 321 Baker Street. The appellant has also provided a signed declaration on both of the appeal development application forms stating that the appeal proposals would result in a loss of 90 square metres (sqm) of Class A1 floorspace at No 323 and the same at 321.
14. Assuming that the Class A1 floorspace is consistent with the uses listed at Schedule 2, Part 3, Class M, Paragraph M.(a) of the GPDO, then if aggregated,

¹ Ref. APP/Q5300/W/17/3184319

² LPA Ref. 18/02843/PIA

³ LPA Ref. 19/02922/PIA

⁴ LPA Ref. 19/02793/PIA

this would breach the floorspace limit for permitted development under Schedule 2, Part 3, Class M, Paragraph M.1.(d) of the GPDO.

15. Various internal works have been undertaken at various times at the appeal property and No 321 and it is common ground between the parties that at some time Nos 323 and 321 were connected internally. However, from the existing floor plans and my observations on site, including of the unfinished internal partition walls between the properties, there is currently no connection between Nos 321 and 323 that would allow internal access between them and so for them to readily function as a single commercial planning unit.
16. The appellant's existing floor plan for No 323 shows a doorway that would provide access from the property to the rear yard of No 321, and I also observed this doorway when I visited the site. However, I am not satisfied that this doorway, which would provide access between Nos 321 and 323 via the rear yard, is sufficient to demonstrate that the two properties function as a single commercial planning unit.
17. The Council states that business rates for 178sqm have been paid for Nos 321 - 323 Baker Street since 1 April 2017. The Council states that this indicates that these properties have not operated as separate planning units since this time and by implication the existing building comprises both 321 and 323 Baker Street. However, the Council has provided no substantive evidence, such as copies of the business rates payment records, to support this position.
18. I do not find the limited evidence regarding the operation of Nos 321 and 323 as a single planning unit to be compelling. The Council has also not explained what has changed since 2018 that now causes it to view the appeal property and No 321 as a single planning unit rather than separate units. The building works that I observed had taken place do not support such a position and the business rates would pre-date the 2018 decisions⁵.
19. For these reasons I am not satisfied that Nos 321 and 323 operated as a single planning unit at the time that the appeal Prior Approval applications were made and so together constituted the existing building. The proposed development would not, therefore, conflict with Schedule 2, Part 3, Class M, Paragraph M.1.(d) of the GPDO.

Highways and Transport

20. The Prior Approval application for the appeal proposal was submitted with a Transport Assessment (TA) from 2018. The TA 2018 concerns a development proposal at 321 and 323 Baker Street for 8 dwellings at ground and first floor. The floor layout is shown on a plan at Appendix A and spans both properties, with several of the flats in 321 Baker Street accessible only from 323 Baker Street. It shows a very different proposal to the current appeal proposals at Nos 321 and 323.
21. Amongst other things, the TA 2018 includes a car parking survey, the results of which are said to show high but not unacceptable levels of on-street parking stress. The appellant has provided a further TA dated 2021, which includes an updated parking survey, the results of which are similar to the TA 2018 in this regard.

⁵ Ref. APP/Q5300/W/17/3184319 and LPA Ref. 18/02843/PIA

22. The Council does not accept the TA 2018 findings and considers that the appeal development, and the development at 321 Baker Street, should be 'car-free', controlled by a suitably worded legal agreement. The Council considers that the absence of such an agreement would mean the proposed development would have harmful transport and highways impacts in terms of increased on-street parking congestion in the area.
23. The appellant has submitted a signed Unilateral Undertaking (UU) planning obligation under S106 of the Town and Country Planning Act 1990 to address the Council's second reason for refusal. I also note that a separate UU has been submitted for the appeal at 321 Baker Street (APP/Q5300/W/21/3279272).
24. Government guidance states that by its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring Prior Approval⁶. In this case I am satisfied that the planning obligation seeking to secure a 'car-free' development would be consistent with this advice.
25. The Council has not directly commented on the submitted UU. However, the UU refers to the following Land Registry title number (MX173166) and the Council's reference number (21/01044/PIA). From the evidence, this Land Registry title number and the Prior Approval reference number relate to 321 Baker Street. 323 Baker Street has a different Land Registry title number (MX174291) and Prior Approval reference number (21/01045/PIA) which are not listed on the submitted UU for the property.
26. I also note that the UU makes repeated reference to 'an Application for Planning Permission' and reference is also made to the Inspector granting 'Planning Permission' for the proposal. This appeal does not concern an application for Planning Permission, rather an application for Prior Approval of permitted development rights granted by the GPDO. Planning Permission for the development has already been granted by the GPDO, subject to specified conditions and limitations. In this case the Council refused Prior Approval not Planning Permission. If I were to allow the appeal, I would be granting Prior Approval not granting Planning Permission.
27. These matters render the UU for No 323 flawed and consequently, it carries no weight in my decision. It would not mitigate the harmful transport and highways impacts from increased on-street parking congestion in the area as a result of the proposed development.
28. The proposed layout drawings considered by the Council in refusing Prior Approval for 323 Baker Street show the provision for the storage of four bicycles at the four dwellings, one per dwelling. Three would be fixed to wall-mounted racks, including the first floor dwelling, with the central ground floor flat having a bicycle storage area off the main corridor.
29. The Council states that for 323 Baker Street, 4 long-stay and 2 short-stay spaces would be needed to comply with the requirements of the London Plan⁷. However, a Prior Approval application should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act

⁶ Planning Practice Guidance - Planning Obligations - Paragraph: 009 Reference ID: 23b-009-20190315
Revision date: 15 03 2019

⁷ Spatial Development Strategy for Greater London 2021

- 2004, or as though the development plan must be applied. The principle of development is established through the grant of permission by the GPDO.
30. Nevertheless, in determining a Prior Approval application such as this one, regard should be had to the National Planning Policy Framework 2021 (the Framework) in so far as relevant to the subject matter of the Prior Approval, as if the application were a planning application⁸. I have had appropriate regard to *Chapter 8. Promoting healthy and safe communities* and *Chapter 9. Promoting sustainable transport*, contained in the Framework.
31. The appellant has produced an updated TA dated 2021, which includes an alternative proposal for bicycle storage to that shown on the appeal drawings. At paragraph 5.9 of the TA 2021, some of the difficulties with the proposed use of wall hung bicycle racks at the appeal property are listed, including that they are accessed via narrow openings and with the upper floor flat requiring a 90 degree turn up a flight of stairs.
32. At paragraphs 5.11 – 5.13 of the TA 2021, to respond to the Council's third reason for refusal, alternative bicycle storage arrangements for all the occupiers of 321 and 323 Baker Street were proposed. The alternative arrangements would entail the provision of racks for the secure storage of up to eight bicycles in the rear yard area of No 321, which would be accessed via a rear service road. A doorway from the rear ground floor flat at No 323 is also shown as opening onto this yard. A structure would be constructed around the racks to provide shelter and the provision for eight bicycles is said to be consistent with the requirements of the London Plan 2021.
33. However, the TA 2021 states that it is not possible to provide short-stay bicycle parking at the appeal property and acknowledges that this does not accord with the London Plan 2021 standards.
34. Government guidance is clear that if an appeal is made 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 sought⁹.
35. With reference to the Wheatcroft Principles, the back yard to be used for bicycle storage is beyond the site edged red and so not part of the appeal site. Furthermore, I am not satisfied that the proposed use of the rear yard for communal bicycle storage for Nos 321 and 323 would not be prejudicial to parties involved in the appeal process. Consequently, I have not considered the proposed alternative bicycle storage arrangements in determining this appeal.
36. From the evidence I am not satisfied that the originally proposed bicycle storage arrangements are adequate. The occupiers of several of the flats would have to travel down a narrow corridor with their bicycle, making turns through narrow opening doorways, and in one case navigating a staircase, before reaching their bicycle storage areas.
37. Furthermore, no visitor bicycle racks are currently located outside the appeal building or in close proximity to it. Notwithstanding the appellant's reference to a contribution towards the provision of two additional bicycle stands near to a

⁸ Schedule 2 Part 3 Paragraph W.(10(b) of the GPDO.

⁹ Annexe M, Paragraph M.2.1, Procedural Guide: Planning Appeals – England, 12 April 2022

parade of shops to the south of the appeal property, no details of how this would be secured are provided.

38. The appellant makes reference to addressing bicycle storage by way of a condition and provides some suggested wording in the TA 2021. However, from its decision notice the Council does not consider that this matter could be addressed in this way.
39. In this Prior Approval case, I am not certain that the proposed wording would meet the test of precision¹⁰. It would not be sufficient to satisfactorily address the various issues I have identified with regard to bicycle parking, including how the provision of visitor parking would be secured. Consequently, I do not consider that this matter could be satisfactorily controlled by way of a condition.
40. I note the appellant's reference to another appeal in Enfield¹¹ that is said to concern a Prior Approval that was refused by the Council for very similar reasons. This appeal decision is not in the evidence before me and I am not familiar with it. In any event, each appeal should be determined on its individual merits, which is what I have done in this case.
41. The 'poor' Public Transport Accessibility Level (PTAL) of '2' for the appeal site¹², together with the absence of a mechanism to ensure the proposed development was 'car-free', means the failure to provide suitably accessible bicycle facilities for future occupiers/visitors is a particularly important consideration.
42. For these reasons, the proposed development would have a significant adverse Transport effect with regard to Schedule 2, Part 3, Class M, Paragraph M.2. Condition 1(a) of the GPDO and would, in so far as it relates to the matters contained under relevant parts of Schedule 2, Part 3, Class M of the GPDO, conflict with the Framework.

Conclusion

43. I am satisfied from the evidence that the proposed development would be permitted development with regard to Schedule 2, Part 3, Class M, Paragraph M.1.(d) of the GPDO.
44. However, with regard to Schedule 2, Part 3, Class M, Paragraph M.2. Condition 1(a) of the GPDO, the increased on-street car-parking congestion as a result of the proposed development and the inadequate bicycle storage provision would cause substantial transport harm.
45. For the reasons given above, and taking into account all relevant matters raised, I conclude the appeal is dismissed.

A Parkin
INSPECTOR

¹⁰ Paragraph 56 of the Framework

¹¹ Ref. APP/Q5300/W/21/3266224

¹² As defined by Transport for London