



Appeal Decision

Site visit made on 16 August 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal Ref: APP/N5660/W/22/3291697

92-94 Landor Road, London SW9 9PE

- 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 Royalcrest International Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/02230/P3M, dated 6 June 2021, was refused by notice dated 30 July 2021.
 - The development proposed is described as 'change of use of existing Betting Shop (Sui Generis) to use as a residential unit'.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appeal relates to an application made to determine if prior approval was required for change of use of the appeal property to one dwelling under Class M of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO').
3. On 1 August 2021, the day after the Council's decision on the application, amendments to the GPDO, including to Class M, made by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 ('the GPD Amendment No 2 Order') came into force.
4. However, Class M as it applied at the time of the application concerned development consisting of a change of use of a building from shop, financial and professional service, hot food takeaway, betting offices pay day loan shop or launderette use; or a mixed use combining use as a dwellinghouse with a shop or financial and professional service, betting office, pay day loan shop or launderette; to dwellinghouses, together with building operations reasonably necessary for the conversion. Such development would be permitted development, subject to limitations specified at paragraph M.1, and conditions at paragraph M.2 including a requirement for developers to apply for a determination as to whether prior approval will be required in relation to a number of specified matters.
5. Having assessed the proposal, the Council considered that the development would not comprise permitted development. It also raised objections in relation to prior approval matters concerning the transport and highways impacts of the

development, the impact on the sustainability of the Landor Road Local Centre and the provision of natural light to habitable rooms within the dwelling.

Main Issues

6. The main issues are:

- (a) whether or not the proposal would be permitted development having regard to:
 - (i) the use of the building, and
 - (ii) the internal area of the proposed development; and, if so
- (b) whether or not prior approval should be granted having regard to:
 - (i) the transport and highways impacts of the development,
 - (ii) the impact of the proposed change of use on the sustainability of the Landor Road Local Centre, and
 - (iii) the provision of adequate natural light in all habitable rooms of the proposed dwelling.

Reasons

- 7. In making the application, the appellant described the proposal as change of use of an existing 'betting shop'. However, the Council's report indicates that the use of the property was changed to a shop in approximately 2019, and this has not been disputed by the appellant. While I have noted comments regarding the existing occupier and the appellant's view that the site is technically vacant, this would not in itself alter the use of the site in planning terms, and I find on the basis of the information before me that the use of the property is a shop.
- 8. The Council's report indicates that there was no planning application for change of use of the site from the former betting shop to a shop. However, the change of use would have been permitted development under Class E of Part 3, Schedule 2 of the GPDO. Although since repealed by the GPD Amendment No 2 Order, Class E permitted development including the change of use of a building with a display window at ground floor level from a use as a betting office to a use falling within Class A1 (shops) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) ('The UCO'). In this context and on the balance of the evidence before me, I consider that permission to use the building for a use falling within Class A1 of the UCO was granted by Part 3 of the GPDO, and I note that this has not been disputed by the appellant.
- 9. The limitation at M.1(b) of Class M as it applied at the time of the application and the Council's decision stipulated that development is not permitted by Class M if permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the UCO has been granted only by this Part. Given my findings above that the use of the property within Class A1 was also granted by Part 3, Schedule 2 of the GPDO, the proposal would not comply with this limitation. I therefore find that the development was not permitted under Part 3, Class M of the GPDO as it had effect immediately before 1 August 2021.
- 10. The appellant has highlighted that following the changes made to Class M by the GPD Amendment No 2 Order from 1 August 2021, the limitation at M.1(b) no longer applies. My attention has also been drawn to a transitional provision

at Article 13(3) of the GPD Amendment No 2 Order. This allows for development that was permitted under a provision of Schedule 2 to the GPDO as the provision had effect immediately before 1 August 2021 to proceed notwithstanding any non-compliance with a condition that had effect immediately before 1 August 2021. To rely on this provision though, the terms of Article 13(3) indicate that any such development would also need to be permitted under a provision of Schedule 2 to the GPDO as the provision has effect on or after 1 August 2021, and comply with any other condition imposed by the new provision.

11. In this case, I note that in addition to removing limitation M.1(b), the GPD Amendment No 2 Order also made changes to the type of development that is permitted by Class M. Under these changes, development permitted by Class M as it has effect on or after 1 August 2021 comprises change of use from a laundrette; betting office; pay day loan shop; hot food takeaway; or a mixed use combining use as a dwellinghouse with use as a laundrette, betting office, pay day loan shop; to dwellinghouses together with building operations reasonably necessary for the conversion. Given my findings above that the use of the appeal property is a shop and that Class M is no longer applicable to shops, I find that the development proposed would not be permitted by Class M as it applies from 1 August 2021.
12. I have also considered whether or not the proposal could be considered permitted development under Class MA of Part 3, Schedule 2 to the GPDO which permits change of use from a use falling within Class E (commercial, business and service) of Schedule 2 to the UCO¹ to a use falling within Class C3 (dwellinghouses). However, the condition at MA.2(3) of this Class stipulates that an application for prior approval for development under Class MA may not be made before 1 August 2021. The appeal application was made before this date, and therefore the proposal would not be permitted development under Class MA.
13. For these reasons, I find that the proposal would not comprise permitted development under a provision of Schedule 2 to the GPDO as the provision had effect immediately before 1 August 2021. Nor would it be permitted under a provision of that Schedule as it has effect on or after 1 August 2021. Accordingly and irrespective of the transitional provisions to the GPD Amendment No 2 Order, I conclude having regard to the existing use of the building that the proposal would not comprise permitted development.
14. The Council also asserts that the proposal would not accord with the limitation at 9A of Article 3 of the GPDO. This outlines that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse where the gross internal floor area is less than 37sqm in size; or that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015. However, it is not necessary for me to go on to also consider the internal area of the development, nor the disputed prior approval matters, given that this could not alter my conclusion that the appeal scheme would not be permitted development.

¹ Class E was introduced by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into force on 1 September 2020, albeit subject to transitional provisions, and includes shops that formerly fell within use class A1.

15. Similarly, while I acknowledge comments from an interested party in support of the proposed change of use referring to problems of damp from the property and enhancement of the road, these are not matters that could alter my conclusion in relation to the compliance of the proposal with the terms of the GPDO.

Conclusion

16. For the reasons given above, I find that the proposal would not be permitted development under the requirements of Schedule 2, Part 3, Class M of the GPDO, and I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR