



Appeal Decision

Site visit made on 4 July 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Appeal Ref: APP/E5330/W/21/3281728

152 Well Hall Road, Eltham SE9 6SN

- 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 Peter Michael of One Vine 001 Ltd against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/1015/PN2, dated 18 March 2021, was refused by notice dated 14 May 2021.
 - The development proposed is the use of part (rear extension) of shop as a flat.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter "the GPDO") for the use of part (rear extension) of shop as a flat at 152 Well Hall Road, Eltham SE9 6SN in accordance with the terms of the application Ref 21/1015/PN2, dated 18 March 2021, and the plans submitted with it, subject to the conditions set out in Paragraph M.2(3) of Schedule 2, Part 3, Class M of the GPDO and the following additional condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans, drawings and documents:
ENV/PMP0001; WHR/01; WHR/02; WHR/03; Letting details for 13, 15, 17 & 18 Well Hall Parade; Correspondence from letting agents dated 4/03/2021 & 15/03/2021; Supporting Statement.

Procedural Matters

2. The "prior approval" application to which this appeal relates was made on 18 March 2021. At that time, Schedule 2, Part 3, Class M of the GPDO permitted the change of use of "retail, takeaways and specified sui generis uses to dwellinghouses", subject to the exclusions and conditions described in Paragraphs M.1. and M.2.
3. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the UCO Amendment Regulations"), amending the Town and Country Planning (Use Classes) Order 1987 ("the UCO"), came into force on 1 September 2020. This had introduced a new "Commercial, Business and Service" Use Class E, which incorporated the previous "Shops" Use Class A1.

The changes to the UCO made by the UCO Amendment Regulations also necessitated amendments to the GPDO.

4. A new Class MA, dealing with changes from Use Class E to dwellinghouses, was added to Schedule 2, Part 3 of the GPDO in April 2021 by the Town and Country Planning (General Permitted Development Etc.) (England) (Amendment) Order 2021¹. Further changes to Schedule 2, Part 3, Class M of the GPDO were then made in August 2021 by the Town and Country Planning (General Permitted Development Etc.) (England) (Amendment) (No.2) Order 2021².
5. The conditions for changes of use made under Class MA are substantially different from those which previously applied under Class M. The transitional provisions of the 2021 Orders, most notably Paragraph 4 of Schedule 13 of the August 2021 "No.2" Order, are clear that in such circumstances, where development has begun, or where a prior approval application has been made before 1 August 2021, "the development may proceed irrespective of whether the new condition has been complied with (but the development must comply with any other condition imposed by the previous provision)".
6. The practical implication of this slightly convoluted legislative background is that it falls to me to determine the appeal with reference to the GPDO before it was amended by the two 2021 orders described in paragraph 4 above. I have therefore referred to the GPDO as it stood on the application date, rather than as it is today.

Main Issue

7. The main issue is the effect of the proposal on the sustainability of the Well Hall Road Local Centre.

Reasons

8. The appeal site is a two-storey (plus basement) mid-terrace building situated on the eastern side of Well Hall Road, within the Well Hall Road Local Centre. The ground floor of the building was previously a shoe repair and locksmith's shop, although at the time of my site visit it was vacant. The first-floor part of the building was described in the supporting statement which accompanied the prior approval application as being "previously used as ancillary accommodation", although I understand that by the time of my site visit it was being used as separate residential accommodation. The proposed development is the use of the rear part of the existing ground floor shop unit as a flat, while retaining a commercial unit at the front of the premises.
9. The Council's primary concern, and the reason for which the prior approval application was refused, is that the size and layout of the commercial unit would render it impractical to operate and unviable. It therefore considered that the change of use would be likely to unacceptably harm the sustainability and continued vitality of the Well Hall Road Local Centre. The appellant, meanwhile, questioned whether the site could be said to be within a "key shopping area", commenting that Well Hall Road "can hardly be characterised as a secondary shopping area, let alone a key shopping area".

¹ Statutory Instrument 2021/428

² Statutory Instrument 2021/814

10. The term “key shopping area” is not defined in the GPDO, although the supporting text to Policy TC7 of the 2014 Royal Greenwich Local Plan: Core Strategy with Detailed Policies (“the RGLP”) explains that such centres provide facilities within walking distance of residential areas, are a valued element of the social fabric of the area, and “particularly benefit residents without cars, or with constrained mobility, who might otherwise be effectively deprived of the services they provide”. I saw on my site visit that the Well Hall Road Local Centre contains a wide variety of shops and services between Eltham Station and Rochester Way. Based on the reasonable range of goods and services I saw on offer within the Well Hall Road Local Centre, in my view it performs the role of a key shopping centre for its local community.
11. The total floor area of the existing ground floor retail unit, including the “ancillary” areas to the rear which would be converted to residential use under the appeal proposal, is around 142m². The evidence before me indicates that the area previously in “active use” by the shoe repair and locksmith business amounted to around 54m² at the front of the premises³, and the rest of the space was “basically unused”. The property also includes a small basement area of around 17m², which would be retained for the commercial unit.
12. The appellant provided information in respect of other premises nearby (also within the Well Hall Road Local Centre) with commercial floorspaces comparable in area to, or smaller than, that which would be retained here. I agree with the Council that using an “average” floorspace of a selected group of small properties is not a great help in considering the effect of the proposal on the centre as a whole. Nevertheless, these other examples illustrate the point that small units are in active commercial use in the surrounding area. In this case, the retained commercial floorspace would be sufficient to provide an acceptable and functional unit for retail use (or a similar “town centre” type use, in the light of the changes to the UCO).
13. The layout proposed would prevent the rear servicing of the commercial unit. It would also result in there being a “shared use” area within the property; the ground floor corridor would be used to connect the shop unit with the cellar and a newly-partitioned area described as an internal “bin store”, as well as providing access from the street to the studio flat. Notwithstanding the appellant’s assertion that the corridor “is not intended to be used as the main entrance for the proposed dwelling” (which instead would be accessed via the back lane from Dunvegan Road), I accept that this arrangement would not be ideal, and would be likely to make the unit an unattractive proposition for some businesses. Nevertheless, such a shared access arrangement is not totally unheard of, and in my view the limitations it would impose would not be so significant as to render the commercial unit unviable for its intended purpose.
14. I saw on my site visit that the wider Well Hall Road Local Centre appeared to be in reasonable health, with a relatively limited number of obviously vacant units (including the appeal site). Accordingly, I conclude that the proposed development would be unlikely to harmfully affect the sustainability of the key shopping area, and the proposal accords with the requirements of Class M.2.(d) of the GPDO.

³ The appellant’s original evidence gave a lower figure of around 40m² for this area, but this was subsequently acknowledged to be an error.

15. The policies of the development plan are not determinative in prior approval cases. However, they are relevant to the planning judgements to be made, and to that extent therefore they are considerations of material relevance in determining the effect on the shopping area. I also find that there would be no conflict with policies TC7 and TC(b) of the RGLP, which among other things seek to protect and support the provision of retail and other services in Local Centres.

Conditions

16. Class M and paragraph W.2 of the GPDO set out standard conditions which apply to all approvals. I have however imposed a condition identifying the approved plans and other supporting information for the avoidance of doubt.
17. The appellant suggested that a condition requiring the internal door between the proposed flat and the shared corridor to be locked other than for emergency purposes could be imposed in the light of the Council's concerns about the layout of the premises. However, given my reasoning set out in paragraph 13 above I do not consider that this would be necessary to make the development acceptable in planning terms.

Conclusion

18. For the reasons given above I conclude that the appeal should be allowed.

M Cryan

Inspector