



Appeal Decision

Site visit made on 8 August 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal Ref: APP/U5360/W/21/3286954

Part ground floor and lower ground floor of 44 Kynaston Road, London N16 0EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr JJ Gluck against the decision of London Borough of Hackney.
- The application Ref 2021/1721, dated 28 May 2021, was refused by notice dated 23 July 2021.
- The development proposed is prior approval for a change of use of part ground floor and lower ground floor from Class A1 to form 2 apartments (Class C3).

Decision

1. The appeal is allowed and prior 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 (as amended) (the GPDO) for the change of use of part ground floor and lower ground floor from Class A1 to form 2 apartments (Class C3) at part ground floor, part lower ground floor, 44 Kynaston Road, London N16 0EU in accordance with the details submitted pursuant to Article 3(1) and Schedule 2, Part 3, Class M of the GPDO through application Ref 2021/1721, dated 28 May 2021.

Preliminary Matters

2. The appeal submission includes an assessment of internal illuminance dated 28th May 2021 ('the AIL') which was not before the Council at the time of its decision. The 'Procedural Guide: Planning Appeals - England' sets out that '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 sought'.
3. In this case, the AIL provides further information on light levels within the appeal building. It does not alter the development proposed, and the Council was able to comment on the AIL as part of its evidence, albeit that it has not done so. Given also the nature of the evidence which relates to the internal environment of the development, I am satisfied having regard to the 'Wheatcroft' principles¹ that my consideration of the information would not prejudice the interests of any party. I have therefore taken it into account.
4. The appellant confirms that the AIL has followed the assessment methodology advised by the British Research Establishment 'Site layout planning for daylight and sunlight: A guide to good practice, 2nd Edition 2011' (the BRE guidance).

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]. This decision has since been confirmed in Wessex Regional Health Authority v SSE [1984] and Wadehurst Properties v SSE & Wychavon DC [1990] and Breckland DC v SSE and T. Hill [1992].

An updated version of the BRE guidance was published in June 2022. However, as there is no specific technical dispute between the parties regarding the submitted AIL and the 2011 BRE guidance, I have based my assessment on those documents.

Background and Main Issue

5. The appeal relates to an application made for Prior Approval pursuant to Class M of Part 3, Schedule 2 of the GPDO. At the time of the application, Class M covered change of use from shops (Class A1), financial and professional services (Class A2), takeaways (Class A5), betting offices, pay day loan shops or laundrettes (Sui Generis Use); or a mixed use combining use as a dwellinghouse with use as a betting office, pay day loan shop or laundrette or a shop or financial and professional service use; to dwellinghouses; together with building operations reasonably necessary for the conversion.
6. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and made significant amendments to the previous system of use classes under the Use Classes Order 1987 (as amended) ('the UCO'). Relevant to this appeal, the previous shops (Class A1) use was incorporated with other uses in a new commercial, business and service (Class E) use. The GPDO was subsequently amended, including by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 ('the GPDO Amendment Order'). Under the GPDO Amendment Order, Part 3 Class M would no longer be applicable to shops. Instead, a new permitted development right at Part 3, Class MA provides for the change of use from commercial, business and service use (Class E) to residential use (Class C3). However, the limitation at MA.2(3) 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 would not therefore be permitted under Class MA.
7. I have determined the appeal accordingly, with regard to Class M as it had effect prior to the amendments made by the GPDO Amendment Order.
8. Development permitted by Class M is subject to limitations which are specified at paragraph M.1, and conditions which are set out at paragraph M.2. The conditions at M.2 establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters, including at part (1)(f) 'the provision of adequate natural light in all habitable rooms of the dwellinghouses'. In determining such an application, paragraph W(10) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
9. The Council has raised an objection in relation to the prior approval matter concerning the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has not argued that the proposal fails to comply with Class M in other respects or that other prior approval matters would be unacceptable, and I have no compelling reasons to find otherwise.

10. The main issue is therefore whether or not prior approval should be granted having regard to the requirement for the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

11. The proposed flats would each have an open plan bedroom and living area at ground floor level. Additional windows and a glazed door would be inserted into the side elevation thus allowing further light to enter those rooms. A roof light would also be inserted in the flat roof above Flat 2's ground floor. The basement level of the flats would have a bathroom and 'galley' style kitchen, although no windows would serve those rooms.
12. The GPDO is clear that it is only natural light to habitable rooms which are a matter of consideration under Part M. It defines a habitable room² as any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.
13. The AIL indicates that within habitable rooms the proposed window/door openings would provide for Average Daylight Factor ('ADF') levels of around 2.28% for Flat 1 and 2.37% for Flat 2. In both cases, these ADF results would exceed the 2% that is recommended by the BRE guidance. I can see no firm reason from the evidence before me to doubt that there would be suitable levels of daylight for the flats, and I conclude that there would be adequate natural light to all habitable rooms of the dwellinghouses.
14. The Council's sole concern relates to the absence of daylight at the basement level of the flats. However, there are no habitable rooms, under the terms of the GPDO, on that level of the building.

Conditions

15. Development under Class M is permitted subject to conditions at Paragraph M.2.(3) which include that the development must be completed within a period of 3 years starting with the prior approval date; and that the building which has changed use is to be used as a dwellinghouse(s) within the meaning of Class C3 of the Schedule to the UCO and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse. The development must also adhere to the provisions at Paragraph W(12) of Part 3 of Schedule 2 to the GPDO which outline that the development must be carried out in accordance with the approved details.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

RE Jones

INSPECTOR

² Paragraph X of Part 3 of Schedule 2 of the GPDO