



Appeal Decision

Site visit made on 15 November 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/T5150/W/21/3287569

965 Harrow Road, Wembley HA0 2SF

- 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 Mr Sumantal Maisuria against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/2907, dated 27 July 2021, was refused by notice dated 27 September 2021.
 - The development proposed is change of use of ground floor retail unit (Use Class E(a) into 2 self-contained dwellings (Use Class C3), partial demolition of rear storage area and alteration to shopfront and rear including new fenestration and creation of light well.
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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) for 'change of use of ground floor retail unit (Use Class E(a) into 2 self-contained dwellings (Use Class C3), partial demolition of rear storage area and alteration to shopfront and rear including new fenestration and creation of light well' at 965 Harrow Road, Wembley HA0 2SF in accordance with the application ref 21/2907 dated 27 July 2021 and the details submitted with it including plan No 20612/03 Rev E subject to the following condition:
 - 1) The development hereby approved shall not be occupied until bicycle storage and storage for refuse/recycling for each dwelling has been provided in accordance with the details shown on plan No 20612/03 Rev E. The storage shall thereafter be retained for these purposes only.

Preliminary Matters

2. As part of the appeal, the appellant submitted an amended 'Existing and Proposed Scheme Design' plan (ref 20612/03 Rev E). The amended plan shows a slight increase in the size of the rooflight to the 1 bed 1 person ('1b1p') dwelling proposed to the rear of the appeal building, as well as alterations to the layout and boundary treatment of the yard at its rear. Given the position of the rooflight within a flat roof and the very slight increase in its size, I am satisfied that it would not result in materially different effects from the scheme that was before the Council and interested parties at the time the application was determined. The alterations to the rear yard would also be very minor, and the Council's transportation consultee has advised that they would address concerns over the quality of access for the rear flat. I am satisfied that they

would not materially alter the nature of the development proposed or be prejudicial to any party. I have therefore taken the amended plan into account.

3. The appeal submission also included an updated version of the Internal Daylight Assessment ('the IDA') that had accompanied the application to take account of the amended plan. Since the appeal was submitted though, the Building Research Establishment ('BRE') issued a new edition of its guide 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice' ('BRE 2022') which revised and replaced the 2011 guidance that had been referred to in both the original and the updated IDA. The main parties were invited to comment on the relevance and any effects of the updated guidance on their cases. As part of their response, the appellant provided a further Internal Daylight and Sunlight Assessment ('IDSA') referring to the BRE 2022 guide. The Council has been able to comment on the IDSA, and I have taken the comments made into account.

Main Issues

4. The appeal relates to an application made to determine if prior approval was required for change of use of the appeal property to two dwellings under Class M of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). The Council does not dispute that the proposal would be development permitted under Class M as it would apply to the appeal, and I have no firm reason to find otherwise.
5. The main issues are therefore whether or not prior approval should be granted having regard to (i) whether or not there would be adequate natural light in all habitable rooms of the proposed dwellings, and (ii) the transport and highways impacts of the development.

Reasons

Adequate Natural Light

6. When the Council determined the application, it noted that the bedroom to the 1 bed 2 person ('1b2p') flat proposed within the front part of the appeal building would be served by a window onto the lightwell, but found that light to this flat would be acceptable having considered the submitted IDA. However, it determined that there would not be adequate natural light to the 1 bed 1 person ('1b1p') dwelling at the rear.
7. The GPDO does not define what is meant by 'adequate natural light'. However, the appellant highlights that use of the BRE 2011 guidance is referred to within the Council's Design Guide Supplementary Planning Document 2018. The Council may not have formally adopted the BRE 2022 guidance, but it replaces the BRE 2011. Neither the BRE 2011 nor the BRE 2022 guidance are mandatory standards to be met. Nevertheless, the Council has not directed me to any alternative standards or guidance relevant to my assessment of light to the development, and from the evidence before me, I consider it reasonable to assess whether or not there would be adequate natural light having regard to the BRE guidance and criteria.
8. The updated IDA submitted with the appeal demonstrates that the 1b1p dwelling as amended would achieve BRE 2011 guideline levels of daylight for a kitchen, as well as the lower guideline levels for a bedroom and living room.

Moreover, the IDSA indicates that habitable rooms to both flats would achieve target levels of daylight according to BRE 2022 on the basis of the 'Target Daylight Factor' method. The IDA and IDSA both indicate that the assessments of light were carried out using modelling techniques with a model that takes account of the surrounding development, including adjacent buildings that could affect light reaching the lightwell, and I have no firm reason to find that the results are not suitably robust. While I accept that levels of light to the rear corner of the 1b1p dwelling where the bed is indicated would be restricted, I nevertheless find having regard to the results of the IDA and IDSA and the BRE guidance that levels of daylight to habitable rooms of both dwellings would be adequate overall.

9. Turning to consider sunlight, the BRE 2022 guidance refers to 'a habitable room, preferably a main living room, receiving at least 1.5 hours of sunlight on 21 March' as indicating provision of an acceptable level of sunlight for a dwelling. It does not suggest that all habitable rooms should receive this level of sunlight.
10. The proposed 1b1p dwelling would receive sunlight significantly in excess of the BRE 2022 sunlight guideline. The bedroom to the 1b2p flat would also receive at least 1.5 hours of sunlight, and, as the bedroom is a habitable room, the dwelling would comply with the BRE guidance on sunlight. I appreciate that the living room would not receive any hours of sunlight on 21 March which would be preferable. However, this reflects its orientation facing broadly north, and it would receive daylight in excess of guideline standards. In this context and given that the dwelling as a whole would meet the BRE 2022 guideline standards for sunlight, I consider that natural light to the living room would be adequate. In addition, while hours of sunlight to the kitchen for the front flat would be slightly less than 1.5 hours on 21 March, rooms which are solely used for cooking purposes are excluded from the definition of habitable rooms within the GPDO.
11. The Council indicates that its concerns in relation to natural light for the development would be exacerbated by the level of outlook achieved and the quality of the accommodation. However, while there can be a relationship with factors which also affect light, outlook is a distinct concept, and the prior approval matter relates only to the provision of adequate natural light. Whether or not outlook would be acceptable is not therefore a matter that I can take into account in the assessment of this proposal.
12. For these reasons and from the evidence before me, I am satisfied that the light levels to the proposed dwellings would be acceptable having regard to BRE 2011 and BRE 2022 guidelines, and I conclude that there would be adequate natural light to all habitable rooms of the dwellings.

Transport and Highways

13. The Council initially raised concerns that the access to the rear flat from The Boltons could be obstructed by parked vehicles on the adjacent land to the rear of 959-963 Harrow Road. However, the appellant has confirmed that there is a right of access over this land, and any obstruction of this right would be a separate matter between the relevant parties. Moreover, the plan submitted with the appeal would additionally provide for access to the flat, and to the cycle and refuse storage proposed within the rear yard, directly from The

Boltons without need to cross third party land. Given these factors, I find that there would be suitable access to the rear flat.

14. The submitted plans also indicate bicycle storage and storage for refuse and recycling to each of the flats which would ensure adequate provision for future occupiers, supporting sustainable transport choices and preventing likely obstruction of the surrounding footways or highways. The Council had raised concerns that the storage indicated on the plans to serve the front flat would require planning permission. In this regard, I note that the national Planning Practice Guidance indicates that developers will need to consider whether associated physical development required to implement a change of use constitutes development, and ensure they have planning permission if necessary¹. I further note that a separate application for the 'installation of bicycle storage and location of refuse bins to front forecourt to shop' which was pending consideration at the time the Council determined the appeal application has since been granted planning permission. On this basis and from the evidence before me, I am satisfied that suitable provision for refuse and cycle storage could be made.
15. I therefore conclude on this main issue that there would not be unacceptable transport and highways impacts as a result of the development.

Conditions

16. Development permitted under Class M of the GPDO must adhere to the conditions set out at Paragraph M.2. These include that the development must be completed within a period of 3 years starting with the prior approval date. The provisions at Paragraph W(12) of Part 3 further require that the development must be carried out in accordance with the approved details.
17. Paragraph W(13) also allows that prior approvals may be granted subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested a condition relating to further assessment of the proposal in light of the BRE 2022 guidance. However, I do not consider that such a condition would be necessary or reasonable having regard to the IDSA provided as part of the appeal. Conditions suggested by the Council's Nuisance Control Officer relating to sound insulation and internal noise levels to be achieved within the dwellings would also be outside of the prior approval matters under Class M. As such, I consider that these conditions are unnecessary and that imposing them would be unreasonable. I have however imposed a condition to require that the indicated cycle and refuse/recycling storage is provided to support sustainable transport choices and prevent obstruction to the adjacent footways or highway which would address the prior approval matter of the transport and highways impacts of development.

Conclusion

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

J Bowyer

INSPECTOR

¹ Paragraph: 055 Reference ID: 13-055-20140306