



Appeal Decision

Site visit made on 11 November 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 DECEMBER 2022

Appeal A Appeal Ref: APP/G5180/W/21/3278581 115 Queensway, Petts Wood, Orpington BR5 1DG

- 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 & Mrs A Bruschi against the decision of London Borough of Bromley.
 - The application Ref 21/01991/AXRPA, dated 23 April 2021, was refused by notice dated 25 June 2021.
 - The development proposed is change of use of rear part of the existing retail area from use class A1 to use Class C3 (residential) to form a dwelling pursuant to Class M of the General Permitted Development Order (2015) (as amended).
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Appeal B Appeal Ref: APP/G5180/W/21/3283252 115 Queensway, Petts Wood, Orpington BR5 1DG

- 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 & Mrs A Bruschi against the decision of London Borough of Bromley.
 - The application Ref 21/03227/AXPRA, dated 20 July 2021, was refused by notice dated 14 September 2021.
 - The development proposed is change of use of rear part of the existing retail area from use class A1 to use Class C3 (residential) to form a dwelling pursuant to Class M of the General Permitted Development Order (2015) (as amended) revised application following refusal of 21/01991/AXRPA.
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Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and prior approval is granted under the provisions of Article 3 and Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of rear part of the existing retail area from use class A1 to use Class C3 (residential) to form a dwelling pursuant to Class M of the General Permitted Development Order (2015) (as amended) revised application following refusal of 21/01991/AXRPA, at 115 Queensway, Petts Wood, Orpington BR5 1DG, in accordance with the terms of application ref 21/03227/AXPRA, dated 20 July 2021 and the plans submitted with it, subject

to the standard conditions set out in paragraphs M.2.(3) and W(12) of the GPDO.

Preliminary Matters

3. Under the transitional and savings provisions of The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 (SI 2021 no 428) as both applications were submitted prior to 31 July 2021 I have considered them against Class M as it existed at that time as opposed to the current Class MA, introduced on 1 August 2021.

Main Issue

4. The main issue in both appeals is whether or not prior approval should be granted having regard to the impact on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops), where there is a reasonable prospect of the building being used to provide such services, and the sustainability of the shopping area.

Reasons

5. Class M of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission for the change of use of a building from a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses) subject to a number of limitations and conditions.
6. There is no dispute that the proposed development does not comply with the limitations that are outlined in paragraph M.1. I have no reason to form a different view.
7. Paragraph M.2(d)(i and ii) set out that development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to, amongst other things, whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) of that Schedule but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area.
8. The appeal site is located within the Petts Wood District Centre. It lies within the Primary Shopping Frontage and is a key shopping area.
9. The shopping area contains a wide range of shops, services and other facilities. At the time of my site visit there did not appear to be a high vacancy rate and there was a moderate level of footfall, although I appreciate this may fluctuate at different days and times. Nevertheless, the shopping area appeared to be relatively healthy and performing well, providing an important facility for the local community.
10. In both appeals, the proposed development would reduce the overall amount of retail floorspace in the appeal property. In Appeal A, the remaining quantum of retail floorspace would be 46.2sqm. In Appeal B it would be 58.7sqm.

11. The Council outline that the lower figure in Appeal A would be well below the prevailing range of retail unit sizes in the shopping area. They also set out that single unit width frontage units have a relatively uniform area measuring between 60sqm and 100sqm.
12. In Appeal A, a rectangular shaped retail floor area of 46.2sqm would remain. This would be well below the range of unit sizes for similar units as identified by the Council. I share the Council's concern that the resulting area would severely restrict the ability to provide for appropriate storage and staff welfare facilities that would be required for a retail unit. This would make the unit notably less desirable to users and would significantly impact on the flexibility for future uses, thus harming the future occupancy. This in turn would cause harm in terms of making an adequate provision of services in terms of retail units and would harm the sustainability of the shopping area.
13. I do not however share the Council's concern that the provision of an access from the retail unit to the rear yard would harmfully impact on the desirability and viability of the retail unit due to the 'agent of change' principle in terms of the occupancy of the proposed residential unit. It is commonplace for residential units in shopping areas to be in close proximity to service areas, and given the size of the retail unit, its use would likely to be limited, low-key, and confined to operating hours of the business.
14. In Appeal B, a greater amount of retail floorspace would be retained of almost 59sqm. This would almost be within the range for single unit width frontages provided by the Council. The floorspace would be made up of the rectangular shaped area proposed in Appeal A and would also include an additional, connected, square shaped area towards the rear of the unit. Although not shown on the plans, it would not be unreasonable to suggest that the additional area is of a size and position where provision of storage and/or staff welfare facilities could be made. Additionally, as the Council identify, the proposed unit may be attractive to a smaller independent retailer, who may otherwise be dissuaded from a medium sized unit.
15. In Appeal B, the Council have expressed concern in terms of the servicing arrangements that would be in place, that being confined to the front of the premises. I observed on my site visit that parking bays were situated in front of the premises, with a dedicated loading bay nearby. It is also not wholly uncommon for such premises to be serviced from the front and I do not consider that it would render the unit undesirable that it would in turn cause harm in terms of making an adequate provision of services in terms of retail units or cause harm to the sustainability of the shopping area.
16. I therefore find that the proposed development in Appeal B would not have an adverse impact on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops), nor would it harm the sustainability of the shopping area.

Other Matters

17. Paragraph W(10) requires local planning authorities to have regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

18. The appellant suggests that the lack of a demonstrable five-year housing land supply (5YHLS) in the authority is a significant material consideration.
19. The Order is, however, clear that regard should be had to the Framework only so far as relevant to the subject matter of prior approval. As planning permission has already been granted for the change of use to residential by virtue of the Order, the consideration of the 5YHLS is not a subject matter of the prior approval.

Conclusion

20. For the reasons given above, and having had regard to all other matters raised, I conclude that Appeal A should be dismissed, and Appeal B should be allowed, subject to the standard conditions set by the GPDO.

A M Nilsson

INSPECTOR