



Appeal Decisions

Site visit made on 15 November 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal A Ref: APP/V5570/W/22/3292885

185 Caledonian Road, London N1 0SL

- 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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr P Brons, 185 Caledonian Road Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/3149/PRA, dated 22 October 2021, was refused by notice dated 17 December 2021.
 - The development proposed is the partial change of use of the basement and ground floor from retail (Use Class E) into 2x residential units (Use C3) at the rear with retained retail use at front.
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Appeal B Ref: APP/V5570/W/22/3292886

187 Caledonian Road, London N1 0SL

- 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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr P Brons, 187 Caledonian Road Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/3153/PRA, dated 22 October 2021, was refused by notice dated 17 December 2021.
 - The development proposed is the change of use of the ground and lower ground floor levels (partial) and first and second floor levels (whole) from retail (Use Class E) into 2x residential units (Use C3) with retained retail use at front.
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Decisions

Appeal A - Appeal Ref: APP/V5570/W/22/3292885

1. Appeal A is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'partial change of use of the basement and ground floor from retail (Use Class E) into 2x residential units (Use C3) at the rear with retained retail use at front' at 185 Caledonian Road, London N1 0SL in accordance with the application ref P2021/3149/PRA dated 22 October 2021 and the plans and details submitted with it including plan Nos 4138-185-X.01; 4138-185-X.03; 4138-185-X.04; 4138-185-X.10; 4138-185-X.15; 4138-185-D.103 and 4138-185-D.115 and subject to the following conditions:
 - 1) The use hereby permitted shall not commence until the rooflights to the ground floor level and fenestration to the rear elevation of the ground floor and basement/lower ground floor levels of the building as shown on

the plans submitted with the application and granted planning permission by the Local Planning Authority on 18 January 2022 as part of development with the application ref P2021/3133/FUL have been installed in accordance with the approved details. The rooflights and fenestration shall thereafter be retained.

- 2) The use hereby permitted shall not commence until arrangements have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which has first been submitted to and approved in writing by the Local Planning Authority. The approved scheme or agreement shall ensure that:
 - (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the Local Planning Authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby approved continues.

Appeal B - Appeal Ref: APP/V5570/W/22/3292886

2. Appeal B is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'change of use of the ground and lower ground floor levels (partial) and first and second floor levels (whole) from retail (Use Class E) into 2x residential units (Use C3) with retained retail use at front' at 187 Caledonian Road, London N1 0SL in accordance with the application ref P2021/3153/PRA dated 22 October 2021 and the plans and details submitted with it including plan Nos 4138-187-X.01; 4138-187-X.03; 4138-187-X.04; 4138-187-X.10; 4138-187-X.15; 4138-187-D.103; 4138-187-D.104 and 4138-187-D.115, and subject to the following condition:

- 1) The use hereby permitted shall not commence until arrangements have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which has first been submitted to and approved in writing by the Local Planning Authority. The approved scheme or agreement shall ensure that:
 - (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the Local Planning Authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby approved continues.

Applications for Costs

3. An application for costs was made in respect of Appeal A by Mr P Brons 185 Caledonian Road Limited against the Council of the London Borough of Islington. An application for costs was made in respect of Appeal B by Mr P Brons 187 Caledonian Road Limited against the Council of the London Borough of Islington. These applications are the subject of a separate Decision.

Preliminary Matters

4. This decision letter deals with two appeals on adjoining sites, both in relation to proposals made pursuant to Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') on adjoining sites. Given the overall similarities of the schemes, I have dealt with them in a single decision letter to avoid duplication. I have however considered each proposal on its individual merits.
5. Class MA of the GPDO contains a permitted development right for changes of use from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order 1987 (as amended) ('the UCO') to dwellinghouses subject to certain limitations and conditions. The conditions at MA.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. In determining such an application, the Local Planning Authority are required 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 appeals on the same basis.
6. Since the appeals were submitted, 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'). This revised and replaced the 2011 version of the guide ('BRE 2011') which had been referred to within the appellant's Daylight and Sunlight Assessment ('DSA') submitted with the applications. The main parties have had the opportunity to make representations on the updated BRE 2022 guidance and its relevance to their cases in respect of Appeal A, albeit that neither party submitted any comments.
7. In addition, I have been provided with details of two applications for prior approval under Class MA¹ at 187 Caledonian Road which were granted subsequent to the submission of the appeals, as well as an appeal decision for a Class MA proposal at 237 Caledonian Road². The main parties were afforded an opportunity to comment on the relevance of these decisions, and I have had regard to the decisions and comments made in determining the appeals.

Background and Main Issues

8. The Council raised objections to both the Appeal A and the Appeal B scheme in relation to the prior approval matter concerning the impact of the proposal on the character and sustainability of the Barnsbury Conservation Area ('the CA'). It raised additional objections to the Appeal A scheme in relation to the prior approval matter concerning the provision of adequate natural light in all

¹ Application refs P2022/2048/PRA and P2022/2125/PRA

² Appeal ref APP/V5570/W/22/3290096

habitable rooms of the dwellinghouses. The Council has confirmed that it does not consider the proposals would fail to comply with Class MA in other respects, and I have no compelling reasons to find otherwise.

9. The main issues are therefore whether or not prior approval should be granted having regard in both appeals to (i) the impact on the character and sustainability of the Barnsbury Conservation Area; and in respect of Appeal A only, to (ii) the requirement for the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

Barnsbury Conservation Area

10. The appeals relate to two adjoining mid-terrace three-storey over basement buildings within the Barnsbury CA. Although the CA is predominantly characterised by late-Georgian/early-Victorian residential development, the Conservation Area Design Guidelines 2002 ('CADG') note that local shopping frontages, including on Caledonian Road, provide local services and are an important contribution to the character of the area. At the time of my visit, building works were ongoing at the appeal sites, and the buildings were unoccupied. Nevertheless, the evidence before me indicates that the ground and lower ground floors of both buildings have previously been in retail use under Class E of the UCO, and I find given their position as part of a local shopping frontage on Caledonian Road that both sites make a positive contribution to the character of the CA.
11. Appeal A proposes the change of use of the rear parts of the ground and lower ground floor levels of 185 Caledonian Road to 2 flats. To the front part of the building, around 21sqm at ground floor level and 29sqm at lower ground floor level would remain in Class E use. Appeal B proposes the change of use of the rear parts of the ground and lower ground floor levels, together with the first and second floor levels, of 187 Caledonian Road to 2 flats. To the front part of the building, around 29sqm at ground floor level and around 18sqm at lower ground floor level would remain in Class E use.
12. Both appeals would result in a significant reduction in the area of Class E floorspace on the site from the existing situation. However, the resulting units would each be of regular shape and practical layout, and while they would both be spread over two floors, this is not in my experience an exceptional arrangement for such units. I cannot therefore agree with the Council that the floorspace would be contrived.
13. Clearly the sites would no longer be able to accommodate occupiers seeking larger units, but it seems to me that they could instead be attractive to other occupiers who may be seeking smaller units. In this regard, the appellant indicates that the existing units had been vacant since June 2020, and has provided statements from 3 commercial agents which together suggest that larger units of 150sqm or more are more difficult to let, and that most interest in the local market is for smaller units of around 20/25sqm-100sqm. The statements do not provide further detail to corroborate these comments, but neither has the Council provided clear evidence in support of its suggestion that floorspaces of around 60sqm, such as may be found at 183 Caledonian Road, are more sustainable. Nor have I been provided with firm evidence to substantiate the Council's assertion that the retained floorspace would be

insufficient for the showcasing of products/services, circulation, browsing and purchasing, even if the lower ground floor levels were to be used for storage and ancillary purposes. From the evidence before me, I am not therefore persuaded that the proposals would result in a significant overall reduction in the pool of potential occupiers, nor in the range of retail or other commercial uses that could be accommodated on the appeal sites.

14. Moreover, I saw at my visit that other units within the local shopping frontage vary in overall size and arrangement, supporting a range of different occupiers which add to the diversity and mixed character of this part of the CA. The Council had suggested nearby units have estimated ground floor areas ranging from 35sqm to 153sqm (with most between 35sqm and 80sqm), an average size of 55sqm, and a median size of 38sqm. However, it indicates that these figures are based on 'data available to the LPA (with assumptions made) from GIS', and there is little before me to explain the methodology used or assumptions made. In contrast, the appellant's evidence details a number of units within the local shopping frontage which have similar, and in some cases smaller, ground floor and total floorspaces, to that now proposed on the appeal sites. The Council has not disputed the floorspace figures presented, and I consider the sources relied on by the appellant would be likely to offer a more accurate gauge of the size of the units concerned than the Council's estimates. Whether or not these units were approved in the context of previous planning policies and guidance, I saw at my visit that they were occupied by a mix of businesses.
15. In this context, the Council's suggestion that the size of the resulting units would be unattractive to potential retail or other Class E occupiers is not one that I find to be compelling. The unit in Appeal A would have a smaller area at ground floor level, although a slightly larger total floorspace than the Appeal B unit. Even so, I can see no firm reason from the information before me that the reduction in Class E floorspace would in either case be likely to make continued commercial occupation impractical or unviable. The proposals would not therefore lead to the removal of the established Class E uses which contribute to the vibrant commercial character of this part of the CA. Furthermore, while there are some nearby smaller units, there are also others of larger size. In my judgement, the overall mix of different sized units within the local shopping frontage would not be significantly altered by the proposals, even when both Appeals A and B are taken together.
16. For these reasons, I conclude that neither Appeal A nor Appeal B would adversely affect the character or sustainability of the Barnsbury CA.

Natural Light – Appeal A Only

17. The appellant's DSA indicates that the dwellings proposed at No 185 would have levels of daylight significantly exceeding the BRE 2011 guidelines according to the Average Daylight Factor measure, and that guidelines in relation to sunlight and the area of rooms receiving direct skylight would also be exceeded.
18. The findings of the DSA are based on external alterations to No 185 that would see fenestration provided to the rear of the building at lower ground floor level; and the enlargement and removal of bars from fenestration to the rear of the building and installation of rooflights to the ground floor. Although these alterations are shown on the submitted plans, I appreciate that the permitted development right at Class MA relates only to the change of use of a building

and any land within its curtilage, and does not include provision for any associated building operations. However, since the Council determined the application, planning permission has been granted under application ref P2021/3133/FUL for development which includes the alterations to fenestration and installation of rooflights relied on within the DSA and shown on the submitted plans ('the Permission').

19. The Council commented that the orientation of the building with its rear elevation facing west/north-west means that sunlight would only be provided at a very limited time of the day before the sunset, and that optimum sunlight would not be achievable. Nevertheless, it has not offered any substantive challenge to dispute the results of the assessments within the DSA that the dwellings would receive adequate natural light following implementation of the Permission alterations. Nor has it raised concerns that updated guidelines in relation to daylight and sunlight would no longer be met, or highlighted any alternative standards or guidance relevant to my assessment of natural light to the development. From the evidence before me, I consider it reasonable in this case to have regard to the DSA, and in the absence of compelling evidence to suggest otherwise, I am satisfied that there would be adequate natural light to habitable rooms within the proposed dwellings should the Permission alterations be implemented.
20. The Council has commented that it would not have powers to force and/or enforce the implementation of the planning permission including the Permission alterations. However, paragraph W(13) of the GPDO provides that prior approval may be granted subject to conditions reasonably related to the subject matter of the approval. I consider that an appropriately worded condition could in this case reasonably require the Permission alterations to fenestration and rooflights that are relied on by the DSA to be completed, in effect providing for adequate natural light before any prior approval took effect. I am satisfied that such a condition would be reasonably related to the subject matter of the prior approval. In addition, the Council's evidence does not explain the basis for its statement that using a condition would be contrary to the prior approval determination of assessing the current plans and condition of the application building, and I can see no firm reason that imposing such a condition would result in tension or conflict with the provisions of Class MA.
21. I am therefore satisfied that a condition could in this case ensure that the Permission alterations were carried out, and I conclude subject to this condition that there would be adequate natural light in all habitable rooms of the Appeal A dwellinghouses.

Other Matters

22. I have noted representations made by an interested party on Appeal B referring to noise, disruption, damage and loss of privacy associated with building works occurring at Nos 185 and 187. However, these are not matters that fall to be considered within the scope of the prior approvals for the change of use of the appeal properties, and any damage caused during building works would be a private matter between the parties involved, as would any activity on or encroachment onto private land. Similarly, the effect of any extensions to the building on light to neighbouring properties is not a matter that is before me to consider as part of these appeals.

23. The lower ground and ground floor levels of 189 Caledonian Road are in use as a gym, but the appellant highlights that there would be a requirement under the Building Regulations for sound insulation to the dwellings. I have no firm reason to conclude that this would be inadequate to ensure that impacts of noise from commercial premises on the intended occupiers of the development would be acceptable. I have noted comments referring to past flooding at Flat A, 189 Caledonian Road, but I do not know the reason for these incidents. The Council confirms that the appeal sites are in an area with a low risk probability of flooding, and I find in the context of the prior approval provisions that there would not be unacceptable flooding risks.

Conditions

24. Development permitted under Class MA of the GPDO must adhere to the conditions set out at Paragraph MA.2. These include that the development must be completed within a period of 3 years starting with the prior approval date, and that any dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the UCO. The provisions at Paragraph W(12) of Part 3 further require that the development must be carried out in accordance with the approved details. Conditions suggested by the Council on both Appeal A and Appeal B that would duplicate these requirements are not therefore necessary.

25. However, I have imposed a condition on Appeal A to require that the use does not commence until the Permission alterations to fenestration and rooflights to the ground and lower ground floor levels have been implemented. This is necessary to ensure the provision of adequate natural light to the dwellinghouses.

26. In addition, the Council has highlighted policies within the Core Strategy 2011 and the Development Management Policies 2013 setting out that new residential development should be car free. Although the GPDO does not require regard to be had to the development plan, I consider in light of the evidence before me that it would be necessary for the appeal developments to be car-free in order to address the transport impacts of the developments including on congestion. In this regard, I have considered the conditions suggested by the Council which purport to restrict the eligibility of future occupiers of the developments to on street residents parking permits. However, whether or not occupiers were eligible for permits would ultimately rest with other parties unconnected to the sites and developments and I am therefore concerned that a condition seeking to impose restrictions on these parties would be unreasonable and unenforceable. I have however attached an amended condition to each appeal which would require submission and thereafter implementation of arrangements to ensure that the developments would be car-free. The main parties were able to comment on the wording of this condition.

Conclusion

27. For the reasons given above, I conclude that Appeal A should be allowed and prior approval granted, and that and Appeal B should be allowed and prior approval granted.

J Bowyer

INSPECTOR