



Appeal Decision

Site visit made on 9 August 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/L5240/W/21/3286789

129 Brighton Road, Coulsdon CR5 2NJ

- 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 Mahan against the decision of the London Borough of Croydon.
 - The application Ref 21/03128/GPDO, dated 12 June 2021, was refused by notice dated 9 August 2021.
 - The development proposed is described as the prior approval for the change of use of the ground floor of 129-131 Brighton Road Coulsdon CR5 2NJ from A2 to C3 under the permitted development rights set out under Class M
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It is noted that although not mentioned within the original description nor specified on the application form, all documentation from both the appellant and Council confirm that the proposal would include additional necessary works to convert the ground floor of the appeal building. As the change of use inclusive of additional works would continue to fall within Class M (set out below), and no party would be prejudiced by considering them, I have dealt with the appeal accordingly.

Policy Position

3. The ground floor of the appeal building is considered to fall into use class E as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO), and the proposed residential use would fall into use class C3. However, applications for prior approval for development under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), which deals with changes of use from class E to dwellinghouses, could not be made before 1 August 2021.
4. As the application was submitted on 12 June 2021, the Council dealt with the prior approval under Schedule 2, Part 3, Class M (b) of the GPDO as it stood at that time, referring to the previous use classification of A2 (which has since been amalgamated into use class E) and as the proposal also included associated works. In this regard I have dealt with the appeal under the same regulatory framework.

Background and Main Issues

5. It is common ground that the appeal scheme before me meets the requirements of Schedule 2, Part 3, Class M.1 of the GPDO such that it would constitute permitted development and subject to the requirement for prior approval in respect to several matters, set out in paragraph M.2 (1).
6. Schedule 2, Part 3, Class M.2 of the GPDO, sets out the conditions for how a proposal of this nature is to be considered. Class M.2 (1) expressly states that before beginning development the developer (the appellant in this case) must apply to the local planning authority (LPA) for determination as to whether prior approval of that authority is required on various matters. It also states that the provisions of paragraph W (prior approval) of Schedule 2, Part 3 on the GPDO are applied in relation to said application.
7. Paragraph W (11) states that development must not begin before the appellant has received from the LPA, a) a written notice of their determination that such prior approval is not required, or b) a written notice giving prior approval; or c) the expiration of 56 days following the date on which the application was received by the local authority and without the authority notifying the appellant as to whether prior approval is given or refused.
8. The LPA provided the appellant with a decision notice dated 9 August 2021, confirming that prior approval is required but not given. By the LPA's calculations from its confirmed date of receipt (14 June 2021) the notice was issued by the expiration of 56 days, and there is nothing before me to say otherwise. I am therefore satisfied that the requisites set out in paragraph W (11) were met and that development relating to the proposal before me could not begin.
9. On visiting the site, it is evident conversion works had started and were substantially finished. I observed that the ground floor had been divided into 2 discrete units broadly in line with the submitted proposed floor plans. The largest space in each unit had an open plan kitchen installed and the other smaller rooms within each unit were appropriately sized for bathrooms and bedrooms. One of the walls facing into the light well had also been knocked out, and on inspection of photographs provided by the appellant taken post my visit, replaced with a glazed patio door. The main parties were made aware of my observations and given opportunity to comment.
10. The main issues are, therefore, whether the proposed development would constitute permitted development in respect to Schedule 2, Part 3, Class M (b) of the GPDO; and if the proposal is found to constitute permitted development, whether it would be undesirable for the ground floor of the building to change use, specifically its effect on the sustainability of a key shopping area, and whether it would provide adequate natural light in all habitable rooms, with specific regard to the bedroom of proposed unit 1.

Reasons

11. Based on my observations referred to above, it is evident that development has begun. Irrespective of whether this is wholly or partially complete, or whether it was begun after the application was made to the LPA or during the appeal process, prior approval cannot be granted and planning permission must be sought.

12. The appellant states no change of use has occurred and the unit could be used for retail. The works I have observed, as referred to previously, and those catalogued within the appellant's photographs, substantially alter the internal ground floor layout of the appeal property and the 2 units created are domestic in form. Although it is noted that the units were not fully completed and not in use.
13. However, the proposal before me is not only for a change of use but also building operations reasonably necessary to convert the building. It is appreciated that internal walls may not constitute development as set out in section 55 of the Town and Planning Act 1990 (the Act). Nevertheless, the physical subdivision of the ground floor would constitute such building operations, and this subdivision, as I observed, substantially reflects that of the proposal before me. I also observed, as set out above, that the nature of the 2 units created, were domestic in form.
14. Consequently, I am satisfied development has commenced and so there is no basis upon which to further consider whether prior approval should be given.
15. It is therefore not necessary for me to consider whether it would be undesirable for the ground floor of the building to change use, and whether it would provide adequate natural light in all habitable rooms, as set out in Schedule 2, Part 3, Class M.2 (1) of the GPDO.

Conclusion

16. For the reasons given above, I conclude that the appeal should be dismissed.

RJ Redford

INSPECTOR