



Appeal Decision

Site visit made on 22 December 2022

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/G2625/W/21/3284049

211 Queens Road, Norwich NR1 3AE

- 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 and Mrs Downes against the decision of Norwich City Council.
 - The application Ref 21/00169/PDR, dated 2 February 2021, was refused by notice dated 1 April 2021.
 - The development proposed is described as the proposal is to convert the vacant unit to a one bedroom flat. A bedroom will be created at the rear of the property, naturally lit and ventilated by a new window (egress) and roof light. An en-suite shower room, mechanically ventilated, would be accessed from the bedroom. The main floor area would then accommodate a kitchen/dining/living area. The kitchen area would be mechanically ventilated. The whole of this area would benefit from natural light, the source of which would be the existing glazed shopfront. A lobby would be created at the front area by installing a partition section, whilst retaining large glazed sections. The lobby area would be suitable as bin and bicycle storage, as well as acting as an insulated/acoustic barrier. The existing shop front would remain. The large glazed windows and door would be made obscure, by means of 'plastic film'. The smaller opening windows at the top on each side would remain as a means of ventilation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. Various classes, including A1, were replaced by Class E in Part A of Schedule 2.
3. However, paragraph 4 of the Schedule (the transitional and saving provision) to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No 2) Order 2021 states that where development would be subject to a new condition, and the application for prior approval was made before 1 August 2021, it may proceed subject to the conditions imposed by the previous provision.
4. Class MA of Schedule 2 of the GPDO introduces a new condition by requiring that the application for prior approval under this class be made on or after 1 August 2021. This is not the same as a condition to which an approval under previous Class M was subject. It is therefore necessary for me to assess the proposal against the conditions imposed on development under previous Class M. This class includes a change of use of a building from a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses).

5. The principle of development is established by the GPDO. The Council's statement of case cites Policy DM21 of its Norwich local plan Development management policies local plan (DMPP). The provisions of Schedule 2, Part 3, Class M of the GPDO do not require regard to be had to the development plan. I have had regard to this policy only insofar as it is relevant to the prior approval matter under consideration.
6. The Council's Statement refers to the Local Retail Centre (LRC) LO2 Hall Road/Queens Road. I have taken this as an error and that the correct reference is LC02.
7. The Council have, as part of their evidence, clarified that the LRC LC02 Hall Road/Queens Road contains 28 units for the purposes of their assessment on unit provision. The Appellant has had the opportunity to comment on this figure. I have therefore taken account of this.

Background and Main Issue

8. Under Class M the proposal is subject to condition M.2(1)(d). It requires consideration of what the impact of the change of use would be on:
 - (i) adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) 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.
9. The main issue is whether or not it would be undesirable for the building to change to a use falling within Class C3 (dwellinghouse), having regard to adequate provision of services and the sustainability of the shopping area.

Reasons

10. The appeal building is a mid-terraced property comprising a shop with a shop front at the ground floor level and residential use on the upper floor. The shop is within the LRC LC02 Hall Road/Queens Road as so defined in the DMPP.
11. The Council identifies¹ that within the defined boundary of LRC LC02, 53.6% of the total 28 units are in non-retail use. I have not been given any clear evidence to the contrary. I observed a variety of commercial uses and services near the appeal site however, there was a limited supply of A1 shops occupying positions within this local centre. In order to access such shops, it is likely that nearby residents would need to travel outside of this local centre and the loss of the appeal building would further reduce the provision of such shops in this retail centre.
12. Furthermore, there is no compelling evidence of any formal marketing for the site's use as a shop since it closed, such as the method advertised, the price asked for sale or rent, the level of interest and reasons why any interest did not proceed any further. It has not therefore been demonstrated that there is no reasonable prospect of the appeal site being used as an A1 shop.

¹ Norwich City Centre Shopping and Town Centre Floorspace Monitor & Local & District Centres Monitor

13. A key shopping area is not defined within the GPDO. The appeal building forms part of a number of businesses within a close-knit area on Hall Road and Queens Road. Though there are some vacant units within LRC LC02, it contains a typical mix of shops and services including, but not limited to, takeaways, public houses, convenience shops, hairdressers, beauticians/body treatments, chiropractors, graphical printing and a launderette.
14. From my observations, this cluster of businesses offers a wide variety of social and commercial uses which are likely to be valued by local residents. I therefore consider that the site falls within a key shopping area for the purposes of paragraph M.2(1)(d)(ii). This view is supported by the fact that the area is protected by Policy DM21 of the DMPP.
15. The collection of retail and commercial premises are within a relatively compact location which adds to the vibrancy of the area. The appeal premises is relatively centralised on Queens Road within the core of the shopping offer, rather than in a more peripheral location.
16. Whilst the loss of the unit, to a residential use, would not result in there being a scarcity of local shops, I consider the introduction of a residential use at ground floor level resulting in the permanent loss of an integral part of the retail frontage would undermine the coherence of the whole. It would also reduce the range of businesses present within the shopping street, driving residents to town centres further away and would have a harmful effect on the character, function and role of a key shopping area and thereby its sustainability.
17. The appellant argues that since the premises are now effectively a Class E use, the shop could be changed to a number of other uses within that class without the need for planning permission or prior approval. However, those other potential uses would in my view be more likely to contribute to the sustainability of the LCR in terms of footfall compared with the appeal proposal. This matter therefore carries little weight.
18. The appellant also states that if the application was made today under Class MA, the reason for refusal could not be used. Additionally, it is argued that recent applications granted could result in further changes to the balance of shops and services found within the LRC LC02. I do not have full details of these schemes, nevertheless, the appeal proposal must be considered against the conditions and limitations set under Class M and has been found contrary to conditions M.2(1)(d)(i) and (ii).
19. Consequently, the proposal would not comply with condition M.2(1)(d)(i) or (ii). I conclude, therefore, that the proposal would have a harmful effect on the provision of services and the sustainability of the key shopping area, and it would, as a result, be undesirable for the building to change to a use to a dwellinghouse.
20. Although not determinative in relation to this appeal, even if I was to accept that an overall 50% balance of A1 shops had been retained the proposal would still conflict with Policy DM21 of the DMPP which, amongst other things, seeks to resist the change of use of shops within local retail centres where it would have a harmful impact on the vitality, viability and diversity of services in the centre, in particular increasing the number of units which would not be available to the public during the normal working day.

Other Matters

21. The Appellant has referenced an A1 shop in breach of planning conditions. This does not form part of the appeal scheme and is a matter for the Council's Enforcement Team to investigate.

Conclusion

22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

A Hickey

INSPECTOR