



Appeal Decision

Site visit made on 19 January 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th April 2023

Appeal Ref: APP/T5150/W/22/3304171

574 High Road, Wembley HA0 2AA

- 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 (GPDO) (as amended).
 - The appeal is made by GB Wembley Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/1994, dated 31 May 2022, was refused by notice dated 26 July 2022.
 - The development proposed is prior approval for the change of use from light industrial (Class E) to 3 residential units (Class C3).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by GB Wembley Limited against the Council of the London Borough of Brent. This application is the subject of a separate decision.

Preliminary Matters

3. An appeal¹ (previous appeal) was allowed for a change of use from a betting office (sui generis) to an adult gaming centre (sui generis) on the ground floor of the appeal building as taken from High Road. At the time of my visit, due to work taking place on the building, it was not possible to establish if the previous appeal scheme had been implemented. Nonetheless, as both the uses are considered to be sui generis, a use of its own kind, I have considered the ground floor as taken from High Road to be in a sui generis use for the purposes of this appeal.
4. I sought the views of both main parties with regard to the works taking place on-site. I have considered the responses received in determining this appeal.
5. Both the main parties agree that the permitted development rights for the change of use under Class MA does not need to relate to the whole building and can relate to a part of the building. I find no reason to disagree with the parties.

¹ APP/T5150/W/21/3279627

Background and Main Issue

6. Development permitted by Class MA, allows for change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses).
7. The Council's reason for refusing the application is that part of the building to change use has a lawful use within the sui generis use class and, therefore prior approval cannot be granted as it falls outside the scope of Class MA. In view of the above, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

8. The appeal building at the time of my visit comprised a ground floor on High Road with access and 2 basement levels located at the rear of the building, again with separate access.
9. At the ground floor level is a former betting shop. There are two floors below ground level when viewed from High Road that were previously used for light industrial purposes (Use Class E). The appeal submission includes drawing number 5162_34. This shows a staircase leading upward, at which drawing no 5162_35 shows a self-contained room served by two windows on the ground floor. The plan indicates no other exits other than the stairs therefore on the evidence before me this area forms part of the Class E unit.
10. The appeal submission drawings² set out the layout of the proposed three flats over both lower ground floor levels and a section of the rear element of the ground floor which would serve as a bedroom for Flat 2. The appellant has drawn my attention to recently approved applications³ under Class MA and that a change of use from sui generis is no longer required. However, these drawings do not reflect the drawings provided with this appeal which I have based my Decision on.
11. As identified by the accompanying drawings and agreed by both parties, the majority of the ground floor of the appeal building is recognised as being within a sui generis use. The bedroom of flat 2 would extend into this sui generis space outside of the existing self-contained room. As such, it would encompass an area of the building not falling within use class E and, therefore would fail to comply with Schedule 2, Part 2, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Other Matters

12. The Council, in their Decision, included an informative on the insertion of a door. A matter which the appellant addressed in their initial appeal statement. However, this is a separate matter to the Council's sole reason for refusal forming the main issue when considered against the reasoning in the officer report. As the proposal is not permitted development under class MA there is no need for me to consider other matters such as the inclusion of a new door.
13. The Council argue that the Article 4 direction would now serve to prevent prior approval from being granted. As such, the appeal should be dismissed on this basis. However, within the GPDO, Article 4(2) states; "A direction under

² Drawing numbers: 5162_30_N and 5162_31_N

³ Ref: 22/3119 and 22/3118

Paragraph (1) does not affect the carrying out of (a) development permitted by any Class in Schedule 2 which is expressed to be subject to prior approval where, in relation to that development, the prior approval date occurs before the date on which the direction comes into force and the development is completed within a period of 3 years starting with the prior approval date;"

14. Article 4(5) of the GPDO defines the "prior approval date" as meaning the date on which (a) prior approval is given; (b) a determination that such approval is not required is given, or (c) any period for giving such a determination has expired without the applicant being notified whether prior approval is required, given or refused.
15. In view of the above, Article 4(2)(a) would allow for any existing applications to continue to a decision which would include any applications that are subsequently appealed. The Article 4 direction does not, therefore, prevent the application from being approved had it been found to meet the relevant requirements of Class MA.

Conclusion

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

A Hickey

INSPECTOR