



Appeal Decision

Site visit made on 26 April 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/Y5420/W/22/3308013

15 Myddelton Road, N8 7PY

- 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 Mr Simon Nissim (Nissim investments Ltd) against the decision of the Council of the London Borough of Haringey.
 - The application HGY/2022/0502, dated 19 January 2022, was refused by notice dated 6 April 2022
 - The development proposed is an application to determine if prior approval is required for a proposed Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) - Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA for the change of use of part of the second and third floors, into three residential flats'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development has been taken from the Decision Notice and Appeal Form as this more accurately describes the proposal. I note discrepancies in the submissions regarding the spelling of the street name. However, I observed on site that the street name provided in the Decision Notice and Appeal Form are correct and have proceeded on this basis.

Main Issue

3. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

4. The appeal site comprises the second and third floors of a part three-storey, part four-storey mixed use building on Myddleton Road. I observed these floors to be occupied on my visit and to be currently in commercial use.
5. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E to a use falling within Class C3, subject to conditions and requirements in paragraphs MA.1 and MA.2. The parties agree that "a building" includes part of a building, such that this would be applicable to the second and third floors that form the appeal site.

6. Paragraph MA.1 states that the change of use will not be permitted unless, among other things: (1)(a) the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval; and (1)(b) the use of the building fell within a specified use class for a continuous period of at least 2 years prior to the date of the application for prior approval.
7. Although the appeal site is currently occupied, the test of vacancy under paragraph MA.1(1)(a) relates to the three months immediately prior to the date of application, being 19 January 2022. The appellant points to pre-application discussions with the Council dated 25 February 2021 during which the parties agreed that, at that time, the site was vacant. However, no further information on the vacancy of the site between this date and the submission of the application has been supplied.
8. It is not a requirement of paragraph MA.1(1)(a) to provide marketing evidence. Nevertheless, it remains that nothing substantive has been submitted to ascertain whether the site was vacant in accordance with the relevant requirement. As such, on the information provided, it cannot be conclusively determined that the building was vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval.
9. With regard to paragraph MA.1(1)(b), the site must have been in use for a specified use class for a continuous period of at least 2 years prior to the application date. This includes, among other things, Class B1 or, on or after 1st September 2020, Class E. Although the original application stated that the site did not comply with MA.1(1)(b), the appellant has confirmed that this was a typographical error.
10. The main parties agree that the most recent planning permission granted at the site was HGY/2012/1190. This granted permission for the demolition of existing buildings and erection of a part 3, part 4 storey building containing 42 residential dwellings (use class C3) and 562 sqm of affordable commercial floorspace (use class B1) with associated parking and landscaping. The Council has also confirmed that the approved use of the site was as commercial floorspace in Use Class B1, which now forms part of Use Class E.
11. Based on my observations and the information submitted there is nothing substantive to suggest that this permission was not lawfully implemented or that, despite periods of vacancy, a lawful change of use of the appeal property has since occurred. As such, the use of the building remains commercial floorspace in accordance with this planning permission. Accordingly, on the information provided, I find that the use of the building fell within a specified use class for a continuous period of at least 2 years prior to the date of the application for prior approval in accordance with paragraph MA.1(1)(b).
12. Nevertheless, for the above reasons, I am not satisfied that the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. Consequently, the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Other Matters

13. Paragraph MA.2 sets out that development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the matters set out in Paragraph MA.2(2). The Council had considered that the proposal would have undue impacts on the living conditions of future occupiers with regard to noise and disturbance from surrounding uses. However, it removed this reason for refusal during the course of the appeal.
14. Submissions were also received from the main parties on the implications of condition No. 16 of planning permission HGY/2012/1190, stating that the premises shall be used as Class B1 only, and a linked section 106 agreement stating that the commercial units shall not be let at rents more than 50% of the market rent in perpetuity. However, given my findings above that the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO, it is not necessary to review these issues in further detail.

Conclusion

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

C Rafferty

INSPECTOR