



Appeal Decision

Site visit made on 27 June 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/T5150/W/22/3312710

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 Schedule 2, Part 2, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO').
 - The appeal is made by GB Wembley Limited against the decision of London Borough of Brent.
 - The application Ref 22/3118, dated 2 September 2022, was refused by notice dated 2 November 2022.
 - The development proposed is prior approval for the change of use from light industrial (Class E) to 1 residential unit (Class C3).
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Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. Development permitted by Class MA of the GPDO, 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).
4. The appeal site relates to a mid-terraced property, which is located within the boundaries of Wembley Town Centre and part of it along High Road also falls within a designated Secondary Shopping Frontage and Primary Shopping Area.
5. As the site lies within the boundaries of a town centre, it is subject to an Article 4 Direction that came into force on 1 August 2022. This has removed permitted development rights in relation to Schedule 2, Part 3, Class M and Class MA.
6. In particular, the Article 4 Direction prohibits: Class MA – Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and services) of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C3 (dwellinghouse) of that order at ground floor level.
7. The proposal is seeking to utilise permitted development rights for a change of use from Use Class E to Use Class C3 of the floor annotated as Level - 2 of the building. The proposal would facilitate a 2-bedroom flat.

8. The Article 4 Direction does not define 'ground floor level'. As such, this is matter of planning judgement for the decision maker to decide whether, as a matter of fact and degree the proposal relates to a 'ground floor level'
9. Nevertheless, the Council has defined the meaning of the words "ground floor level" as 'the level of the ground' or 'street level.' In the absence of any other definition, I have had regard to this in determining this appeal.
10. When the appeal building is accessed from High Road (comprising a commercial unit previously used as a betting shop) there are two immediate floors beneath it. The lowest of which is the area of the building to which the application for change of use relates to (identified as Level - 2 of the submitted plans). This floor meets and is accessed directly off Market Way.
11. I have noted how the floor level of the building, subject of the proposal has been historically identified by the Council in dealing with other planning applications and by an Inspector in a recent appeal decision relating to this building. The appellant has also shown how similar floors/levels have been identified by the Council in respect of similar properties within the area. Nonetheless, in this case, on the ground, because the area for the proposed change of use meets and is directly accessed off Market Way, this also comprises a 'ground floor level' to the building.
12. With reference to the 'Justification Note' which is the document published by the Council in support of the Article 4 Direction, the appellant asserts that the main objectives of the Article 4 Direction is to protect the economy of Brent's high streets. Adding that, as the topmost floor of the appeal building is the floor with a commercial unit accessible from the high street ('High Road'), it would follow that this is a commercial unit that the Council intended to restrict.
13. However, the 'Justification Note' cites the Council's key ambition 'to support the vitality and viability of the town centres in the borough.' To this end, the entirety of the building in question is caught within the designation boundaries of Wembley Town Centre, as shown on the plan appended to it.
14. Moreover, had the Council intended the Article 4 Direction to only include the immediate high street areas and associated commercial units, as asserted in the appellant's Legal Note, dated 11 August 2022, then the Council need only draw the boundary line so as to exclude all other land. However, this is not what the plan appended to the Article 4 Direction shows. Indeed, along with Market Way part of Lancelot Road is included within the boundary, which is also not on the 'high street.'
15. I have also taken account of comments made by the Council in respect of a planning application relating 560, 562 and 562A High Road for the change of use of the retail unit at basement level (Use class A1) into a tattoo and piercing parlour (Sui Generis) (ref: 18/4899). On the limited information available, this largely relates to the interpretation of a development plan policy and how a particular proposal would impact on existing shopping frontages within Town Centre Areas. This application also pre-dates the Article 4 Direction. Therefore, overall, this is of limited relevance to it.
16. Irrespective, whilst I have had regard to the 'Justification Note' and planning history for the appeal site and nearby buildings, the principal document for the determination of this appeal is the Article 4 Direction.

17. The proposed change of use in relation to 'Level -2' as annotated on the submitted plans, relates to a 'ground floor level' to the appeal building. As such, this would fall within the scope of the Council's Article 4 Direction in relation to the removal of permitted development rights under Class MA of the GPDO. Therefore, the proposal does not benefit from the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Conclusion

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

M Aqbal

INSPECTOR