



Appeal Decisions

Site visit made on 24 February 2023

by S Edwards MA MATCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2023

Appeal A Ref: APP/L5810/W/21/3284339

561-563 Upper Richmond Road West, East Sheen, London SW14 7ED

- 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 Mrs N Patel against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 21/2003/GPD13, dated 2 June 2021, was refused by notice dated 28 July 2021.
 - The development proposed is change of use of premises from a mixed use (Class A1/E and Class C3) to a residential use (Class C3) to form a pair of semi-detached houses.
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Appeal B Ref: APP/L5810/W/21/3284357

561-563 Upper Richmond Road West, East Sheen, London SW14 7ED

- 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 Mrs N Patel against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 21/2710/GPD13, dated 30 July 2021, was refused by notice dated 21 September 2021.
 - The development proposed is change of use of premises from a mixed use (Class A1/E and Class C3) to a residential use (Class C3) to form a pair of semi-detached houses.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made by Mrs N Patel against the Council of the London Borough of Richmond-upon-Thames. These applications are the subject of separate Decisions.

Preliminary Matters

4. 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 GPDO), planning permission is granted for the change of use of varying uses to dwellinghouses, subject to limitations and conditions.

5. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) Regulations 2020 came into force and provided that Classes A1, A2, A3, B1, D1 and D2 were to be replaced by a broader Class E (Commercial, business and service) Use Class. Any permitted development rights for the change of use of premises falling within Class E to a C3 dwellinghouse are now covered by a new Class MA.
6. The Regulations however include transitional provisions retaining the effect of previous permitted development rights. This means that if any application for prior approval under Class M has been made on or before 31 July 2021, as in the present cases, it may proceed subject to the conditions imposed by the previous provisions, which notably permit the change of use of a building falling within Class A1 (shops) to C3 dwellinghouses.
7. As both appeals relate to the same site and some of the issues raised are of a similar nature, I shall consider them in a single document, in the interests of brevity.

Main Issues

8. The main issues are:
 - Whether the proposal would accord with the requirements of Schedule 2, Part 3, Class M of the GPDO; and
 - If permitted development, whether prior approval should be granted, having particular regard to:
 - ✓ For Appeal A, the provision of adequate natural light in all habitable rooms of the dwellinghouses; and
 - ✓ For both appeals, the transport and highways impacts of the development.

Reasons

Whether permitted development

9. The two-storey building subject to these appeals is, as detailed in the description of development, in mixed use. It comprises commercial premises at ground floor level which, at the time of my site visit, were in use as a newsagent. The remaining of the ground floor premises and the upper floors are in residential use. One of the units has its own separate entrance to the side of the building. To the rear of the commercial premises, there is a door providing access to another flat, which comprises accommodation to the rear of and above the shop.
10. Having regard to the presented information and my own observations, I find that this connection establishes the existence of a physical and functional link and thus a relationship between the commercial premises and this existing residential accommodation. It has not been demonstrated that these premises are used for substantially different and unrelated purposes. As a matter of fact and degree, and in the absence of substantive evidence to the contrary, I therefore consider that these premises have to be regarded as a single planning unit in mixed use.

11. Accordingly, the accommodation situated to the rear and above the retail premises needs to be included for the purposes of calculating the floorspace which would be changing use as a result of the proposal. As the cumulative floor space of the existing building changing use at ground floor level and above would exceed 150 square metres, the proposal fails to meet the requirements of paragraph M.1(c).
12. My attention has been drawn to another prior approval application¹ for the change of use of the premises from a mixed A1/residential use to C3 residential use, which has previously been granted by the Council. However, the approach followed by the Council in the context of a separate prior approval application is not a matter for me to comment on. I am required to determine the appeals before me, having regard to the GPDO.
13. The proposal subject to Appeal A also includes the construction of additional elements, such as boundary walling, fencing, bin storage areas and cycle parking within the rear gardens. These would be clearly separate from the appeal building and would not result in the external dimensions of the building being extended. In that respect, the proposal subject to Appeal A would therefore meet the requirements of paragraph M.1(e).
14. Paragraph W.(3) of Schedule 2, Part 3 to the GPDO states that an application may be refused where insufficient information has been provided to enable the Authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified as being applicable. For the reasons set out above, insufficient information has been presented in these instances to demonstrate that the proposals would accord with the requirements of paragraph M.1(c). Consequently, I cannot be satisfied that the appeal schemes would constitute permitted development.

Prior approval matters

15. The Council's decision letters also set out the reasons why prior approval for both schemes was refused. However, as the proposals do not represent permitted development, there is no need to consider whether or not prior approval in respect of the accompanying conditions set out in paragraph M.2 would be required.

Other Matters

16. The appeal schemes would enable the creation of a pair of semi-detached dwellings, which would make a contribution towards local housing need. I also note the appellant's point that these houses would provide a better standard living of accommodation than the flats. However, these are not determining factors in the context of prior approval appeals which, as noted above, I must consider having regard to the requirements of the GPDO.

Conclusion

17. For the reasons detailed above, I conclude that both appeals should be dismissed.

S Edwards

¹ Local Planning Authority Reference 18/2716/GPD13.

INSPECTOR