



Appeal Decision

Site visit made on 5 March 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2024

Appeal Ref: APP/T5150/W/23/3330194

The Manor Gym, Arena Place, 307 Cricklewood Broadway, Brent, London NW2 6PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 (as amended).
 - The appeal is made by Mr Demos Philiastides against the decision of the Council of the London Borough of Brent.
 - The application Ref is 23/1635.
 - The development proposed is the change of use of the second and third floors from gym (Class E) to residential flats (Class C3).
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permit the change of use of a building within Class E (commercial, business and service) of Schedule 2 of the Use Classes Order (UCO) to a use within Class C3 (dwellinghouses) of Schedule 1 of the UCO.
3. Development is permitted under Class MA subject to the limitations set out in paragraph MA.1, and the conditions set out in paragraph MA.2, which include matters in respect of which the developer must apply to the local planning authority (LPA) for a determination as to whether the prior approval of the authority will be required.
4. The Council refused the application for prior approval on the 4 July 2023 on the basis that the application has failed to provide evidence showing that the site has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. The second reason for refusal relates to the transport impacts of the proposed development, impacts of noise from commercial premises on the intended occupiers of the development, the provision of adequate natural light in all habitable rooms of the dwellinghouses and whether the proposal would provide acceptable standard of accommodation.
5. It subsequently came to light that the appeal site is the subject of an Article 4 direction.

6. Article 4 of the GPDO allows the Secretary of State or the LPA to make a direction disapplying the permission granted by Article 3 for certain classes of development in Schedule 2 of the GPDO if it is expedient. The effect of an Article 4 direction is that development should not be carried out unless an application has been made for permission and this has been granted. The Article 4 direction must specify the area and class of development to which it relates.
7. In the case of the appeal site, the Council has confirmed that the Article 4 direction came in to force on 1 August 2022. The effect of the Article 4 direction is that the permitted development rights afforded by Class MA of the GPDO do not apply and an application for planning permission, not prior approval would be required. I have been provided with copy of the Article 4 direction and the appellant has been invited to provide comments on this document. I am satisfied that no party has been prejudiced by the submission of this information.
8. Therefore, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

9. The appeal site, together with Nos. 303, 305 and 309 Cricklewood Broadway are allocated in the Brent Local Plan 2019-2041, adopted February 2022 (BLP) for residential, industrial and commercial uses. The Article 4 direction came into force in August 2022 and includes a map which identifies the location of the allocated sites to which it applies. It clearly identifies the appeal site as one of these locations and its effect is to remove the permitted development rights granted under Class MA for the change of use of a commercial use (Class E) to a residential use (Class C3).
10. The application for prior approval was made on the 5 May 2023, after the direction came into force. I have not been presented with any evidence which indicates that the correct procedures were not followed and that the Article 4 direction is not valid. Therefore, based on the evidence before me, I find that the Article 4 direction is in force and is applicable to the appeal site.
11. I have had regard to the appellant's comments regarding the need for the Article 4 direction and its applicability to the appeal site. I also note their submissions in relation to the BLP and the allocation of the site. However, as outlined above, there is an Article 4 direction in place and it is not a matter for this appeal to consider whether the Article 4 direction is relevant or reasonable.
12. For these reasons, I conclude that the proposal does not benefit from the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.
13. Consequently, as I am dismissing the appeal for this reason, there is no need to consider the transport impacts of the proposed development, impacts of noise from commercial premises on the intended occupiers of the development, the provision of adequate natural light in all habitable rooms of the dwellinghouses and whether the proposal would provide acceptable standard of accommodation.

Other Matters

14. I note the Appellants dissatisfaction with the Council, particularly in relation to the submission of the Article 4 direction at the appeal stage. However, this is a matter between the parties and cannot have any bearing on my determination of the appeal.

Conclusion

15. For the above reasons, the appeal is dismissed.

K Lancaster

INSPECTOR