



Appeal Decision

Site visit made on 1 July 2024

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2024

Appeal Ref: APP/V5570/W/24/3341023

15 Westbourne Road, Islington, London N7 8AN

- 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 Paul Whitlock against the decision of the Council of the London Borough of Islington.
- The application Ref is P2023/3334/PRA, dated 17 November 2023, was refused by notice dated 11 January 2024.
- The development proposed is change of use from Class E (commercial) to Class (C3) dwelling for the unit located at ground floor and basement, for a single (1 bed 2 person) dwelling.

Decision

1. The appeal is allowed, and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) for the change of use from Class E (commercial) to Class (C3) dwelling for the unit located at ground floor and basement, for a single (1 bed 2 person) dwelling at 15 Westbourne Road, Islington, London N7 8AN in accordance with the terms of the application Ref P2023/3334/PRA, dated 17 November 2023, subject to standard conditions within Class MA.2(5) and Class MA.2(6) and:
 1. The development hereby approved shall be carried out in accordance with the following approved plans: 000_OS Location Plan, 101_Proposed Plans and Elevations, 501_Room Areas, 500_Proposed Plans, 202_Section Existing & Proposed and Internal Daylight Assessment dated March 2024 (Issue No. 3).
 2. Prior to first occupation arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
 - (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.

3. Notwithstanding Condition 1, the dwelling hereby approved shall not be occupied, until details of secure cycle parking within the site shall be submitted to and approved in writing by the Local Planning Authority. These details shall include plans at a minimum scale of 1:50 to show the location of cycle parking and include the type of stands to be installed. The secure cycle parking shall be carried out in accordance with the approved details prior to first occupation of the development and it shall thereafter be retained for use by the occupiers of the approved development.
4. Notwithstanding Condition 1, the dwelling hereby approved shall not be occupied until details of refuse and recycling storage within the site, as well as a point of collection, shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include drawings at a scale of 1:50 and show space for recycling containers and wheeled refuse bins, as well as include details of materials used in the construction of the refuse and recycling storage, enclosures or screening. The development shall be carried out in accordance with the approved details and be retained as refuse and recycling storage for the occupiers of the approved development thereafter.

Preliminary Matter

2. The description of development in the banner heading and above is taken from the submitted application form except where I have deleted the words "Prior Approval for" and "with a gross internal area of approximately 105 sqm" from the description as these are not acts of development.

Background and Main Issue

3. 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 GPDO), planning permission is granted for the change of use from commercial, business and service (Use Class E) to dwellinghouses (Use Class C3) subject to certain limitations and conditions.
4. The above legislation establishes the principle of development; as such, regard does not have to be had to the development plan as normally would be. I have nevertheless had regard to Policy R5 of Islington Local Plan Strategic and Development Management Policies 2023 (Local Plan), the St Mary Magdalene Conservation Area Design Guidelines (CADG) and the National Planning Policy Framework insofar as they are material considerations relevant to the main issue.
5. The Council's second reason for refusal relates to a lack of information to demonstrate the levels of natural light received within proposed habitable rooms within the basement. Subsequently, the appellant has provided an updated Internal Daylight Assessment dated March 2024 (Issue No. 3), which illustrates the proposed light levels within the basement, and concludes that the proposal would not lead to unacceptable light levels for future intended occupiers. The Council has confirmed that the reason for refusal has been addressed and it does not wish to pursue it further. I see no reason to disagree and consider Class MA.2(f) of the GPDO has been satisfied.

6. Given the above, the main issue is the effect of the proposed development on the character and sustainability of the conservation area.

Reasons

Character and Sustainability of the Conservation Area

7. The appeal site comprises the ground and basement of an existing commercial terraced property. The property is a four-storey building, with upper floors already in residential use. The premises last operated as a hair and beauty salon and has remained vacant since September 2020.
8. The appeal site is located in the St. Mary Magdalene Conservation Area (CA) and is locally listed along with numbers 13-23 (odd) Westbourne Road as a non-designated heritage asset (NDHA) for its 'street value' as being a 'good example of the period'. As such, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The CA is described as having an area of special architectural and historic interest, with a character and appearance that is worthy of protection and enhancement.
9. The significance of the CA includes St Mary Magdalene Church and its gardens, 18th-century terraces along Liverpool Road and semi-detached villas to its east and grand houses to the west, which face Arundel Square and Ellington Street. The shopfronts provide a visual focus and interest which assists the character of the area. The terrace, within which the appeal site is located, is predominantly residential and includes the converted St Clements Church, now St Clements Court. Three commercial uses are opposite on the ground floor with residential above.
10. The CADG acknowledges that often the best use for a building is that which it was designed for, and states Councils should seek to retain public houses, shops and workshops in appropriate uses which will not diminish their special interest.
11. The proposed development would change the use of the existing Class E premises to a 1 bed, 2 person Class C3 across two floors. There would be no external alterations to the shop frontage.
12. The CA is not characterised by its number of commercial uses but more a mix of uses, with Westbourne Road and the terrace within which the appeal site is located having predominantly residential uses. The Council's de-designation of Westbourne Road as an LSA demonstrates that it acknowledges that the area has moved towards becoming predominantly residential.
13. Whilst the 'character' of an area is not defined solely on the basis of aesthetics, in my view, the level of human activity and the way the CA is experienced has a bearing, for example, footfall, comings and goings and nature of activity associated with its use. As the appeal site is no longer within a defined commercial area and as a number of buildings have been converted into residential nearby, the conversion of the appeal site to residential use would not have a deleterious effect on the defining characteristics of the CA.
14. I am aware that 13, 19, 21 and 23 Westbourne Road have been converted from retail use to residential. Even if each property obtained planning consent via a different regime than that of the appeal before me, the presence of residential

use within former retail premises lends weight to my conclusion that the proposal is acceptable.

15. My attention has been drawn to appeal Ref APP/V5570/W/22/3290096 relating to 237 Caledonian Road (No 237), for which the appellant has submitted the Appeal Decision. I concur with the Inspector that human activity, and the way people interact with their environments, are important considerations of an area when considering its character, particularly within conservation areas. I visited Caledonia Road and noted that it consists of predominantly commercial units to the ground floor along almost its entire length. A change of use to residential in this context would harm the character of the Barnsbury Conservation Area. However, the context within which No 237 is set is significantly different to the appeal before me as not to be comparable.
16. The Council have drawn my attention to appeal Ref APP/V5570/W/23/3320826 relating to 6 Ferntower Road. Whilst the issues may be similar to those of the appeal before me, I have not been provided with the details surrounding this appeal. As such, I cannot be sure that the circumstances are comparable. In any case, I have determined the appeal on its own merits, based on the evidence before me.
17. Bearing in mind the above, the Council has not successfully demonstrated that the loss of this retail unit would significantly change the character or sustainability of the CA. As such the proposed development would have a neutral effect on the CA and the NDHA and thereby preserve the character and the appearance of the CA as a whole.
18. I conclude that the proposed development would not change the character or the sustainability of the CA and therefore accords with the requirements of paragraph MA.2(e) of the GPDO.

Other Matters

19. The Council have argued that no marketing was submitted alongside the application, however, the provisions of the GPDO no longer stipulate that the premises be vacant (MA.1.a). As such, Policy R5 of the Local Plan is relevant to the appeal before me.
20. Whether or not the Council has received and approved more Class MA applications than any other London borough is not a determining factor within this appeal.
21. Whether or not there is a viable use for the premises goes beyond those restrictions set out under Class MA of the GPDO upon which my assessment must be made.

Conditions

22. The Order attaches standard conditions to this type of development, including that development must be completed within a period of 3 years and any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse. As such, there is no need to restate those on this decision. The PPG does allow for additional conditions but is clear that these must only be related to the subject matter of the prior approval.

23. The Council has suggested a number of conditions and I have considered against the tests set out in the PPG. In some instances, I have made minor changes to wording to improve precision and enforceability.
24. Given that the level of natural light to habitable rooms within the basement is reliant upon an opening within the ground floor, a condition requiring the development must be carried out in accordance with the details provided in the application is considered necessary.
25. The Council suggests a condition which would prevent future occupiers from obtaining residential parking permits. Given that No 15 is situated within a Controlled Parking Zone and there is no dispute between parties that the proposed development would be car-free, in the interests of transportation impacts of the development, such a condition is considered necessary to make the development acceptable.
26. The Council also suggests conditions requiring the submission of refuse and recycling storage and secure cycle parking. In the interests of transportation impacts of the development, conditions which require submission of details and subsequent implementation of approved refuse and recycling storage and secure cycle parking are necessary.
27. The Council also suggests a condition restricting any external alterations. However, I am not satisfied that this condition has been provided justified, and it would therefore fail the test of necessity. As such this condition has not been imposed.

Conclusion

28. For the reasons given above the appeal should be allowed and prior approval is deemed to be granted.

L Clark

INSPECTOR