



Appeal Decision

Site visit made on 7 April 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 May 2025

Appeal Ref: APP/U5930/W/24/3355146

215 Forest Road, Walthamstow, Waltham Forest E17 6HE

- 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 M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs Joana Neza against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 242188.
 - The development proposed is prior approval application for conversion of floorspace at first and second floor level, and entrance hall and staircase at ground floor level to one self-contained residential unit (1 x 2-bed) (Use Class C3).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mrs Joana Neza against the Council of the London Borough of Waltham Forest. This application is the subject of a separate decision.

Preliminary Matters

3. The description of development in the banner heading above is taken from the Council's decision for clarity, as it is omitted from the application form.
4. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Background and Main Issue

5. Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), provides that development consisting of (a) a change of use from (i) (aa) launderette; (bb) betting office; (cc) pay day loan shop; or (dd) hot food takeaway or to (ii) a mixed use combining use as a dwellinghouse with a use falling within one of the uses mentioned in paragraph (i) (aa), (bb) or (cc) or to a use falling within Class C3¹ (dwellinghouse), is permitted development subject to limitations and conditions set out under M.1 and M.2 of the GPDO.

¹ Town and Country Planning (Use Classes) Order 1987 (as amended).

6. M.1 (a) of the GPDO states that development is not permitted by Class M if the building was not used for one of the uses referred to in Class M (a) on 20th March 2013, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
7. The change of use of the ground floor of the appeal site at 215 Forest Road (No 215) to a hot food takeaway (Council Ref: 83/960) was originally approved in 1983. This was subject to a condition stating that the permission related to the ground floor only. The associated Council report stated that the upper floors would be occupied residentially by the applicant and his family. The planning history suggests that a hot food takeaway has operated continuously from the site for many years.
8. A prior approval application, similar to the appeal proposal, for the change of use of the upper floors of No 215 to a dwellinghouse (Council Ref: 240947) (previous decision) was refused by the Council in June 2024. The Council's reason for refusal in that case, differed from the Council's reason for refusal with regards to the appeal proposal. At that time, the Council considered the appeal building to comprise a mixed-use as a hot-food takeaway and a dwellinghouse, and therefore did not fall under one of the uses specified uses under Class M.(a) (i) of the GPDO. This decision has not been appealed by the appellant.
9. The main parties indicate that the previous decision is not relevant to this appeal due to further justification submitted by the appellant regarding the existing use of the building. The Council state that they now consider the residential use of the building to be ancillary to its hot food takeaway use. On this basis, the Council refused the appeal proposal for different reasons relating to the resultant mixed hot food takeaway and C3 Use, which it does not consider to be permitted development by virtue of Class M of the GDPO.
10. Despite the change to the Council's reason for refusal, I am obliged to consider the provisions of Class M of the GDPO in its totality, insofar as it is relevant to whether the proposed development would be permitted development.
11. The main issue is whether the proposed development would be permitted development under Class M of the GPDO.

Reasons

12. No 215 comprises a three-storey terrace building with a hot-food takeaway ('takeaway') at ground floor level. Customer access to the takeaway is via an entrance door within its shopfront. There is a separate non-customer access leading to the upper floors positioned adjacent to the shopfront.
13. At the time of my site visit, the upper floors of No 215 were in residential use and contained five bedrooms and a bathroom. Kitchen facilities at ground floor level are used for both commercial and domestic purposes. There is internal access between the takeaway and the residential accommodation above. Therefore, a physical linkage between the residential use of the building and the takeaway exists since the uses are not physically separate. Furthermore, a functional linkage exists since the occupiers of the residential accommodation also operate the takeaway, as confirmed by the personal statement / declaration provided by the existing and previous owner.

14. Whilst the building represents a single planning unit, residential use and use as a takeaway are materially different in character, with the use of the upper floors for residential purposes occurring in a large proportion of the overall building. The takeaway could operate without the residential use and vice versa, with a likelihood that the kitchen is used for domestic purposes when the takeaway is closed to customers. The residential use is not the same, as say, a food storage area which would be linked to and support in an ancillary way the primary use of the takeaway.
15. As a matter of fact and degree, I find that the existing building therefore contains two primary uses. On this basis, the existing building is in a mixed use because it has two primary uses within the same planning unit and it is not possible to say, or is correct on the information before me, that one is ancillary to the other.
16. This is a similar conclusion as the Council found in its previous decision on this issue. As I have explained above, I sought the views of the main parties on this matter and while both are now consistent in their view that the earlier decision is not the correct approach, I disagree. I am satisfied that the parties have had the opportunity to comment on this matter and that, having taken their views into account, I am able to consider the appeal proposal on its merits in respect of this issue.
17. The appeal proposal is for the conversion of the first and second floor of the building to a self-contained 2-bed flat. An internal wall would separate the entrance to the proposed dwellinghouse from the takeaway and a new kitchen/diner/living space would be provided at first floor level. The takeaway at ground floor level would be retained. This would result in the creation of two separate planning units in No 215. This could comply with the definition of a 'building' which includes 'part of a building' for the purposes of applying Class M of the GPDO set out in Article 2(1) of the GPDO.
18. Nevertheless, this is not a determinative point in this appeal since the application before me seeks prior approval for a change of use of a building that is currently in a mixed residential and takeaway use. On this basis, the appeal proposal would not fall under one of the uses specified under Class M (a) (i) and would not comply with M.1 (a) of the GDPO.
19. For the above reasons, the proposed development would not be permitted development under Class M of the GPDO.

Other Matters

20. My attention has been drawn to a previous appeal decision² at 19 - 21 Brockley Rise. I do not have full details of the circumstances that led to this decision. Furthermore, it related to a different site and development comprising the change of use from betting offices to a mixed use, with a shop at the front (class A1 use) and a flat to the rear (class C3 use). As such, it does not represent a direct parallel to the appeal proposal. In any case, I have determined the appeal on its own merits.
21. Other matters relating to M.1 (c) – (g) of the GPDO are not in dispute and it has not been necessary for me to consider prior approval matters under M.2 of the GPDO. Even so, this does not overcome the fact that the development would not be permitted development for the reasons given.

² APP/C5690/W/20/3248680

Conclusion

22. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR