



Appeal Decision

Site visit made on 8 August 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022

Appeal Ref: APP/T0355/W/21/3275978

6 Harrow Lane, Maidenhead SL6 7PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant approval required under Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Malkit Purewal on behalf of MSHR Capital LLP against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00218, dated 25 January 2021, was refused by notice dated 23 April 2021.
 - The development proposed is described on the application form as: 'Prior notification under Class M of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 - Change of use of A1 shop and associated garage to two dwellings (Use Class C3)'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Malkit Purewal on behalf of MSHR Capital LLP against the Royal Borough of Windsor and Maidenhead. That application is the subject of a separate Decision.

Preliminary Matters

3. The Borough Local Plan 2013-2033 (the BLP) was adopted by the Council in February 2022. The main parties have had the opportunity to make observations upon any relevance of this to the outcome of the appeal. Even so, the relevant prior approval provisions do not require regard to be had to the development plan. I have only had regard to the policies of the BLP in so far as they are material to the matters for which prior approval is sought.
4. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and had the effect of amending and simplifying the system of use classes. A use formerly falling within Class A1 now falls within Class E. Nevertheless, in this case, the Council's determination was applied for in advance of the relevant 31 July 2021 deadline set out under paragraph M.2(3)(c) to Part 3 of the GPDO. This means that transitional provisions apply, such that, notwithstanding mentions made to Class A1 uses, the appeal should be determined in accordance with the GPDO that was in force immediately before 1 August 2021. I shall consider the appeal on this basis.

5. The main parties to this appeal do not dispute that the proposal complies with all requirements of paragraph M.1 to Class M of the GPDO, where development not permitted is set out. I shall consider the appeal on this basis, focusing upon relevant conditional requirements set out at paragraph M.2.
6. A change of use of two buildings, which I observed to be connected by the remains of a former walkway cover, is proposed, together with building operations reasonably necessary to convert the buildings, to provide two flats. A conditional requirement of paragraph M.2(1) of the GPDO is that, before beginning the development, the developer must apply for a determination as to whether prior approval is required with respect to various specified matters. Therefore, prior approval cannot be granted for development that has already begun.
7. Having considered the full suite of evidence that is before me, including site photographs, it was apparent upon inspection that building operations have, in recent times, taken place with respect to the western of the two buildings. These operations have included the replacement/insertion of various windows and doors and have, to my mind, materially affected this building's external appearance. As such, even if a C3 dwellinghouse use has yet to commence, development, as defined in the Act, has begun, and I am unable to consider granting prior approval for Flat 2 as annotated on the proposed ground floor plan¹. The remainder of this decision is focussed on the eastern building (the building) and proposed Flat 1.

Main Issues

8. The main issues are:
 - Whether or not the design or external appearance of the building would be acceptable; and
 - Whether or not it would be undesirable for the building to change to a use falling within Class C3 (dwellinghouses), having particular regard to the impact of the change of use on the adequate provision of services.

Reasons

Design or external appearance

9. The provisions of paragraph M.2(1)(e) require the Local Planning Authority to assess the acceptability of the proposed development based on the design or external appearance of the building. The external alterations that are proposed are limited in extent and focussed on ground floor level. The proposed fenestration would be suitably respectful of the building's immediate surroundings. The proposed addition/re-positioning of a front-facing door has been described by the Council as uncontentious, and I have no reason to disagree.
10. Whilst the Council has stated concerns pertaining to internal layout and living conditions, these are not design or external appearance matters. Moreover, the nationally described space standard does not apply because the application for prior approval was made before 6 April 2021². As such, Principle 7.8 of the Borough Wide Design Guide (June 2020) is of little relevance.

¹ Sheet# 2/6, Revision 1.0A

² SI 2020/1243 Article 12(2)

11. For the above reasons, the design or external appearance of the building would be acceptable and the scheme satisfactorily accords with Policies QP1 and QP3 of the BLP and section 12 of the National Planning Policy Framework (July 2021) in so far as these policies seek the achievement of well-designed places.

Impact of the change of use on the provision of services

12. The provisions of paragraph M.2(1)(d) require the Local Planning Authority to assess whether it is desirable for the building to change to a use falling within Class C3 because of the impact of the change of use on adequate provision of services of the sort that may be provided by a building, but only where there is a reasonable prospect of the building being used to provide such services. The relevant use classes referenced in the GPDO, in accordance with transitional and saving provisions³, include A1 (shops).
13. The appellant has asserted that there is no prospect of the property being used in a retail capacity, and that this would be undesirable given the location of the property in an out-of-centre location and in a residential area. However, of pertinence in this case, the building was not vacant upon inspection. It was instead in use as a party shop, with trading hours listed to the entrance door. This demonstrates that, contrary to any suggestion made otherwise, there is a reasonable prospect of the building being used to provide retail services.
14. The building's present use provides a seemingly valuable facility that is readily accessible to many, and that would be undesirable to lose despite not being within the town centre or a key shopping area. I come to this finding even whilst acknowledging references made within a submitted Commercial Assessment⁴ to former commercial sites in the local area where residential uses have been permitted.
15. For the above reasons, having particular regard to the impact of the change of use on the adequate provision of services, it would be undesirable for the building to change to a use falling within Class C3 (dwellinghouses).

Other Matters

16. I have noted potential scheme benefits, including the contribution that would be made to housing supply in a Borough where recent levels of delivery dictate that the presumption in favour of sustainable development is engaged. However, unlike where an application for planning permission has been submitted, my considerations are necessarily limited to the conditions, limitations and restrictions specified within paragraphs M.1 and M.2 of Class M, Part 3 to Schedule 2 of the GPDO. For the avoidance of doubt, as I have identified that it would be undesirable for the building to change use, and that development has begun with respect to the western building, prior approval should be refused.

Conclusion

17. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR

³ SI 2021/814 Article 13 and associated Schedule

⁴ dated 8 April 2021