

Appeal against a Refusal by the London Borough of Hillingdon of a Prior Approval Application for Conversion of existing ground floor retail unit to create 2 x 2 bed apartment (Class C3) under Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

APPELLANT'S RESPONSE TO LPA STATEMENT AND THIRD PARTY REPRESENTATIONS

APPEAL REF: APP/R5510/W/21/3285557

Introduction

1. This statement of sets out the appellants response to the LPA statement and third party representation by the Northwood Residents Association.

The LPA statement

2. It is noted at para.2.2 that the LPA agrees with the appellant that the description could be changed to 2 x 1 bedroom dwellings without prejudice to any party.
3. With regard to paras. 2.3 – 2.7, whilst it is accepted that the onus is on the applicant to provide accurate information, it is also incumbent on the LPA after validating an application, to seek to clarify information particularly where there is discrepancy between the plans and the application form, as unintentional errors do occur.
4. Also as asserted in the appellant's statement of case at para.11, the LPA did get the applicant to amend the application form and it is perplexing why clarification was not sought over the areas at the same time which could easily have been undertaken which would have led to refusal reasons 1 and 2 being unnecessary.
5. In any event, the Inspector should note that the Council does not dispute the appellants contention that the floor areas as shown on the submitted plans are within the prescribed limits. Therefore it is contended that in relation to reasons for refusal 1 and 2, it is within the remit of the Inspector to set aside these reasons for

refusal that would not render any allowed appeal invalid due to inconsistencies on the application form.

6. In regard to paras. 2.8 – 2.11, the LPA claims that the submission of the light assessment as part of this appeal is an amendment to the refused proposal that violates case law as established by the Wheatcroft principles. It is contended by the appellant that this is a very extreme application of case law that is not reflective of the circumstances.
7. Firstly, there have been no amendments to the scheme. Therefore there has been no change to the nature of the application. The proposal is as described and shown on the plans is the same. Secondly, the submission of the assessment is a direct response to the reason for refusal. It is common practice to submit information such as lighting assessments at appeals to address reasons for refusal. Thirdly, at no time during the consideration of the application did the LPA raise the issue of natural light being a problem. If they had done so, a light assessment could have been submitted.
8. Therefore it is contended that the submission of the light assessment does not conflict with the Wheatcroft principles and this claim is totally refuted by the appellant. It should also be noted by the Inspector that the LPA does not contradict the findings of the assessment that the natural light to respective habitable rooms would be more than adequate and would exceed the minimum standards prescribed by BS82062.
9. With regard to para.2.13, the LPA claims that nowhere within Policy DMTC 3 does it imply that the conversion of shops to residential units is acceptable, subject to a 50% threshold being met. However, it is contended by the appellant that Policy DTMC 3 is a policy that is applied when changes of uses are considered, including to presumably, residential which in effect is a change of use. As part of that consideration, the policy states that the Council will consider the (i) retention of sufficient essential shop uses; (ii) at least 50% of the local centre is retained as Class A1 shops; and (iii) the surrounding area is not deficient in essential shop uses. It is contended that the appellants have demonstrated that the proposal meets the policy criteria. It should be noted by the Inspector that this is not disputed by the LPA.
10. With regard to para.2.14, it is contended by the appellants that the LPA are arbitrarily referring to additional criteria that is not mentioned by the policy. The purpose of policy is to provide the criteria against which assessments can be made that is transparent and understood by users of the plan. The claim that the loss of the existing retail unit would undermine the viability because of its flexibility to go to other uses is not provided for policy nor is the requirement for a marketing evidence. Consequently the LPA claims with regard to viability are refuted by the appellant.

11. In regard to paras. 3.1 – 3.2, it is the appellant's contention that the warehouse is used on conjunction with the retail shop. This issue will be addressed further in the response to the third party representations below.
12. In any event, if the Inspector does take the view that the warehouse is not, it is considered that it is within the powers of the Inspector to issue a split decision whereby allowing prior approval for the front part of the site to be converted whilst dismissing the appeal in connection with the rear proposed flat.
13. With regard to the conditions suggested by the LPA to be imposed should the appeal be allowed, it is contended that these go beyond what is provided for by the legislation, particularly in regard to suggested conditions 3 and 4. Contamination is an issue that should have been considered by the LPA as part of the assessment under Conditions M.2 (1)(b) of the GPDO whilst landscaping is not a consideration as part of the GPDO. Consequently the appellant would contest the relevance and applicability of these conditions.

Northwood Residents Association (NRA)

14. The concern expressed by the NRA that the loss of this retail unit would affect the viability of the parade is dealt with above. The appellant fails to see how the parade being in an Area of Special Local Character has any relevance to the viability of the parade. It is contended the loss of this retail unit would not have a harmful impact on the overall viability of the parade.
15. The NRA contend that the area to the rear, the workshop/warehouse, was used separately to the retail use. In support of this contention, a land registry entry and plan is submitted, as is a demise plan and an email from the purported previous occupiers.
16. The relevant condition to the GPDO, condition M.1 (a) states that development is not permitted by Class M if – the building was not used for one of the uses referred to (i) on the 20 March 2013, or (ii) 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.
17. The appellants contend that the workshop/warehouse was in use with the shop as storage at the due date. It should be noted that the land registry entry is dated 9/02/2012 which is well before 20 March 2013. In regard to the demise plan this is undated and therefore could also be showing the situation before the due date. Finally in relation to the email, there is no information as to from when to when the purported tenants operated the workshop. It is therefore considered that the information submitted in support to the NRA association is not convincing as to support their contention.
18. The NRA in their statement refer to the 2017 Rating Valuation List which they state supports their contention that the area is not in retail use. However the appellants

would contend that the words “Store and Premises” would indicate an ancillary use as claimed by the appellants.

19. That said, should the Inspector take the view that the workshop/warehouse is not in retail use, then it is contended that a split decision can be issued as it is not disputed the proposed conversion of the shop to a one bedroom flat is entirely within the retail area.
20. The reference to the error on the application form in regard to floor areas has already been discussed above.
21. With regard to the claim that there are more commercial premises further up the road towards Emmanuel Road and that the thirteen houses in between should be taken into account which would bring down the percentage of retail premises, it is contended that when calculating local parades, domestic dwellings are not included. It is also the case that the LPA has not disputed the appellants calculation. Finally it is worth noting that in that small parade, i.e. 110 – 116 High Street, there is a chemist and another convenience store.
22. With regard to the contention that the conversion would adversely affect the hairdresser next door, it is not made clear how this would be the case. In any event this claim is refuted.
23. With regard to design, it should be noted that the LPA had no issues with the external appearance of the property and the claim that that empty shop look will have an adverse impact on other shops is refuted.
24. As regards issues of outlook and external amenity space, these are matters outside the parameters of the GPDO legislation and therefore cannot be considered as part of this prior approval appeal.

Conclusion

25. It is considered that neither the LPA case or the third party representations overcome the appellants view that the refusal of prior approval is justified with regard to this appeal.
26. It is hoped that the Inspector agrees and grant prior approval for the proposed change of use.