

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).

**Statement of case
by Appellants**

LPA ref: 32265/APP/2021/710

Introduction

1. This statement of case in regard to an appeal against the refusal of a Prior Approval application for the change of use of the ground floor retail unit to one dwelling under Class M of the 2015 GPDO as amended. Whilst the application form requested prior approval was sought for 2 x 2 bedroom dwellings, in reality the application should only have applied for 2 x 1 bedroom dwellings as shown on the submitted plans. It is considered the description can be changed without causing any prejudice to any party.
2. The application was undertaken under the previous legislation that was subsequently changed to Class MA.
3. Class M of the 2015 GPDO (as previously amended) provides for the permitted development of retail, takeaways and specified sui generis uses to C3 dwellinghouses as well as the building operations reasonably necessary to convert the building. The application, the subject of this appeal, was submitted on the 18 February 2021 and refused by decision notice dated 28 April 2021. The period for appealing was six months. This means that provided an appeal is submitted by the 28 October 2021, it would be considered.
4. Submitted with the application was the following:

FLU.1441.01 – Location Plan

FLU.1441.02 – Existing Floor Plans
 FLU.1441.03 – Existing Elevations
 FLU.1441.94 – Proposed Floor Plans
 FLU.1441.05 – Proposed Elevations

(Copies of the plans are submitted with this appeal as **Appendix 1**).

5. Prior approval was refused for the following reasons as noted on the decision notice:

The applicant has demonstrated in Q.13 of the submitted application form that the gross internal floor area of the existing retail unit is 174 square metres. It is considered that the application submission constitutes development not permitted as the cumulative floorspace of the existing building changing use under Class M exceeds 150 square metres contrary to the provisions of Schedule 2, Part 3, Class M.1 (c) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The applicant has demonstrated in Q.12 and Q.13 of the submitted application form that the gross internal floor area for the proposed residential units would be 174 square metres. It is considered that the application submission constitutes development not permitted as the development would result in more than 150 square metres of floor space in the building having changed use under Class M contrary to the provisions of Schedule 2, Part 3, Class M.1 (d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Having regard to the proximity of No.78 High Street to the adjoining Kate Fassnidge Community Hall, it is considered that insufficient information has been submitted in order to enable the Local Planning Authority to establish whether the development complies with Condition M.2-(1)(f) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in respect of the provision of adequate natural light in the Bedroom Areas at Ground Floor Level and the Kitchen and Sitting Room Areas towards the rear of the property at Ground Floor Level.

The proposed development, by reason of its siting within the Northwood High Street Local Parade, would result in the loss of an essential retail unit that would be harmful to the sustainability of this Local Shopping Parade contrary to the provisions of Policy DMTC 3 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and prior approval is refused having regard to the provisions of Condition M.2-(1)(d)(ii) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

(Copy of the decision notice submitted with this appeal as **Appendix 2**)

6. In effect there were four reasons for refusal, two relating to what the development was described as (reasons one and two), and two other reasons relating to

inadequate light and harm to the sustainability of the Local Shopping Parade by the loss of the retail unit.

7. This appeal statement addresses the reasons for refusal as mentioned in the decision notice and discussed in the officer's report (also submitted with this appeal as **Appendix 3**). As already stated, the application should have only be for two x one bedroom units on the ground floor. This can clearly be seen from the submitted plans. The first floor already is in use as a 2 bedroom flat as clearly indicated on the existing floor plans (FLU.1441.02). This should have been apparent to the case officer.
8. It should also be noted that the LPA had no objections with regard to the following aspects of the application:
 - Impact on the design and external appearance of the building;
 - Highway issues arising from the proposed development;
 - Flooding risks in connection with the building;

Consequently it is not intended to comment further on these matters in this statement.

Grounds for Appeal against the Reasons for Refusal

Reasons for Refusal (RR) 1 and 2

9. RRs 1 and 2 relate to the amount of floor space mentioned in the application form where it is stated that the area involved amounted to 174 sqm which is more than the 150 sqm allowed for by Class M for a change of use to a dwellinghouse. With regard to these RRs, it is abundantly clear that there was error in the original figures that were included on the application form when considered against the submitted plans. The correct breakdown of existing floor space to proposed floor space with regard to the application are:

Existing retail unit – 54.16 sqm
 Existing workshop – 63.90 sqm
 Existing Flat on first floor– 54.67 sqm.

Proposed ground floor being converted 74.1 sqm
 Workshop being retained – 43.96 sqm
 Flat being retained on first floor – 54.67 sqm

10. Whilst it is accepted that it is incumbent on the applicant to try and ensure application details are correct as far as possible, it is inevitable that errors occur. A simple analysis of the proposed plans where it is clearly stated that the proposed floor space would be well below 150 sqm should have alerted the LPA to this error. Indeed the application form at Section 12 states that the gross internal area was 87 sqm. However no effort was made by the LPA to contact the applicant to clarify this

point. It is contended that this goes against the spirit of engaging positively with applicants as set out in paragraph 38 of the NPPF (in both the current and previous versions). Had the LPA sought clarification, this error would have been corrected leading to RRs 1 and 2 not applying.

11. It is understood the LPA had asked the applicant to amend the sections that were handwritten. This can be seen by comparing the original application to that which was changed. (A copy of the original submitted application form is attached as **Appendix 4** and the amended copy as **Appendix 5**). However no attempt was made to clarify the floor areas which should also have been undertaken.
12. Consequently it is contended that it is clear that the actual cumulative floor space of the existing building that would be converted would be 74.1 sqm as noted on the proposed plan. Therefore the 150 sqm threshold as provided by Class M would not be exceeded.

Reason for Refusal (RR) 3

13. With regard to this RR, the appellants would claim that there are 6 windows on that elevation that provide light and ventilation to the bedroom, kitchen and sitting room. On that basis, there is ample natural light that would penetrate these areas. Nonetheless, attached is an internal daylight assessment which makes clear that using the Average Daylight Factor (ADF) test as prescribed by the BRE guidance and BS82062, the proposed habitable rooms have plenty of natural light, well in excess of the minimum standards prescribed by BS82062 (copy of assessment attached as **Appendix 6**).
14. Consequently, it is considered that this reason for refusal has been addressed and does not amount to a material consideration in this appeal.

Reason for Refusal (RR) 4

15. Provision M.2 (1) (d) (ii) of the then Class M requires the developer to apply to the local planning authority for a determination as to whether the prior approval of the local authority will be required as to whether it is undesirable for the building to change to a use as a dwellinghouse because of the impact of the change of use - *“where the building is located in a key shopping area, on the sustainability of that shopping area”*.
16. RR4 states that the proposal would lead to the loss of an essential retail unit that would harmfully affect the sustainability of the of the local parade so conflicting with Policy DMTC 3 of the Hillingdon Local Plan: Part Two – Development Management Policies (adopted 2020) which seeks to maintain the viability of local centres and local parades. So Policy DMTC 3 and its provisions are the tests as to whether a proposal for a change of use would harm a viability of Local Centres and Local Parades.

17. The officer report states that the Council's Planning Policy Team have assessed the application and consider the site is located within the Northwood High Street Local Parade which is designated in Table 3.2 of the Local Plan: Part 2 (2020). The policy section claim the building is therefore located in a key shopping area and the loss of a shop and its frontage in this location is likely to be harmful to the sustainability of this local parade. It is further claimed that no information has been provided by the applicant which addresses the potential harm to the parade.
18. Policy DMTC 3 - Maintaining the Viability of Local Centres and Local Parades - states that the Council will protect and enhance the function of local centres by retaining uses that support their continued viability and attractiveness to the locality they serve. In considering applications for changes of use of shops, the Council will ensure that (i) a sufficient essential shop uses are provided appropriate to the size of the parade; (ii) at least 50% of the local centre or shopping parade is retained as A1 shops; and (iii) the surrounding residential area is not deficient in essential shop uses.
19. The accompanying text to the policy at para.3.14 states that the following uses are considered important at the local level – pharmacy, post office, grocer, baker, butcher, greengrocer, and newsagents. These are referred to as essential shops. Para.3.15 goes on to state that residential areas which are not within 800m of at least 5 essential shop uses are defined as being deficient. When considering applications for a change of use, accessibility to alternative shops that are available to residents within 800m will be taken into account by the Council.
20. Para.3.16 states that the Council will, in assessing proposals ensure parades and local centres retain as many essential shops as possible with no less than three in smaller parades and a choice of essential shops on larger parades and in local centres. The paragraph echoes the policy objective of seeking to ensure that at least 50% of a shopping parade is retained as Use Class A1 shops (extract of Policy DMTC 3 attached as **Appendix 7**).
21. In response, the appellant would contend that firstly, it's the policy section of the LPA that has introduced the words "key shopping area" to this local parade. The word "key" is not found in the policy wording or accompanying text of Policy DMTC 3.
22. Secondly as part of addressing RR4, the appellant has undertaken an assessment of the uses in the High Street. A table of uses and their Classes is set out below, with the previous use class shown in brackets, prior to amendments undertaken to the Use Classes Order last year by amendments to the GPDO 2015:

	Address	Use	Use Class
1.	2-4	Zeppelin Vehicle Parts	Class E (a) – (A1)
2.	6	Gittins Mulderrig	Class (c) – (A2)

		Accountants	
3.	8	Andy Clark Builders	Sui generis
4.	10	Aquaswim – pool contractors	Sui generis
5.	12	Northwood Launderette	Sui Generis
6.	14	Vacant shop	Class E (a) – (A1)
7.	16	Uniflora	Class E (a) – (A1)
8.	16	Taste of Portugal - Restaurant	Class E (b) – (A3)
9.	18	Northwood Rugs and Carpets	Class E(a) – (A1)
10.	18b	Ellie's Hair Salon	Class E (c)- (A1)
11.	20	Tracey's Hair and Beauty	Class E (c) – (A1)
12.	22	Kenway Upholstery	Class E (c) – (A1)
13.	24	Magic Wok	Sui Generis – (A5)
14.	26	General Store – Convenience store, newsagents and off license	Class E (a) – (A1)
15.	28	Board of Ironing - ironing services	Class E (c) – (A1)
16.	30	Paws for thought - Doggy Grooming and day care	Class E (c) – (A1)
17.	32	Billion Dollar Barbers	Class E (c) – (A1)
18.	34	Northwood Tailors and Alterations	Class E (c) – (A1)
19.	36	Karaidukar Sambar - Restaurant	Class E (b) – (A3)
20.	38	Alfred Ashley Group – Telecommunications providers	Class E (c) – (A1)
21.	40	Oscar and Hunt – Estate Agents	Class E (c) – (A2)
22.	42-44	Canterbury Travel – Travel Agents	Class E (c) – (A1)
23.	46	Express Mobile Phones	Class E (c) – (A1)
24.	48	Red Klove - Restaurant	Class E (b) – (A3)
25.	50-52	Pullens Clothing shop	Class E (a) – (A1)
26.	54	Melodies Music Education	Class E (c) – (A1)
27.	56	Spa Bar London – Nail Bar	Class E (c) – (A1)
28.	58	Butterflies Cafe	Class E (b) – (A3)

29.	60-62	G&D Mechanical Services Ltd	Sui Generis
30.	64	Pneumatic Services (London) Ltd	Sui Generis
32.	66-68	Munday Long and Co - Accountants	Class (c) – (A2)
33.	70	The Barbers Room	Class E (c) – (A1)
34.	72	ABI Convenience store, off license and Newsagents	Class E (a) – (A1)
35.	74	Northwood Fish and Chips	Sui Generis – (A5)
36.	76	Kate Fassnidge Community Hall	F1/F2 – (D2)
37.	78	Pat-A_Cake Store and Newsagents	Class E (a) – (A1)
38.	80	Eighty Hair Ltd	Class E (c) – (A1)

23. It can be seen that of the 38 commercial outlets located on the ground floor of the High Street, some 21 properties are in Class E use which was previously A1 use (highlighted in yellow). This is 55.26% of the parade which was in previously A1 use. The loss of No.78 would still result in 52.63% of parade still being in a Class E use or previous A1 use. This would accord with requirements of Policy DMTC 3 that at least 50% of the parade would still be Class E (A1) premises.

24. It should also be noted that there would be still 2 other convenience stores/newsagents that would remain, i.e., ABI and the General Store, which provide the same essential service as the application premises. These are within 800m of the surrounding residential area. Therefore, it is contended the criteria of the policy has been met in terms of the tests for the acceptability of a proposal.

25. Consequently it is contended that the proposal would not have a harmful impact on a key shopping area or the sustainability of that area and would accord with Policy DMTC 3 as set out in the adopted plan.

Conclusion

26. Prior approval was refused for 2 x 1 bedroom flats under Class M of the previous incarnation of the legislation. The application was refused for 4 reasons. It is considered that this statement of case with submitted additional information demonstrates that those reasons for refusal are not sustainable.

27. It is hoped that the Inspector will agree and grant prior approval for the proposed change of use.

List of Appendices

1. Copies of submitted plans
2. Copy of Decision Notice
3. Copy of Officer's Report
4. Original Application Form
5. Amended Application Form
6. Daylight Assessment Report
7. Extract of Policy DMTC 3