



Appeal Decision

Site Visit made on 17 December 2020

by **Ian Radcliffe BSc(Hons) DMS MCIEH MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th February 2021

Appeal Ref: APP/W2465/W/20/3259525

122 East Park Road, Leicester LE5 4QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class M of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr A Mohamad against the decision of Leicester City Council.
 - The application Ref 20201038, dated 1 June 2020, was refused by notice dated 8 August 2020.
 - The development proposed is the change of use of part of ground floor shop (Class A5) to three self-contained flats (3 x 1 bed) (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the site visit and consideration of the application plan, the appellant was contacted and advised that a relevant consideration in deciding whether the proposed change of use would be permitted development, and thus comply with Class M, was whether the flats would be large enough to provide the facilities required for day to day private existence and so constitute dwellinghouses. As a result, a scaled drawing was requested to demonstrate how each flat would accommodate a bed, living area, dining area, kitchen area, bathroom, toilet and storage, together with any comments he wished to make on this issue. His response, Drawing no A1-001 Issue A, received on 26 January 2021, has been taken into account in determining this appeal. The local planning authority was invited to comment but did not do so.

Main Issues

3. The Council's sole objection to the proposed change of use relates to its decision that prior approval was required in relation to flood risk and its refusal to grant such approval. However, as described above, for the proposal to constitute permitted development it must firstly comply with the wording of Class M of the GPDO. The main issues in this appeal therefore are:
 - whether the proposal would result in the change of use of part of the ground floor shop (Class A5) into 3 dwellinghouses and so comply with Class M; and,
 - whether the prior approval of the local planning authority is required as the flooding risks in relation to the building.

Reasons

Development permitted under Class M

4. 122 East Park Road is a three storey terraced property located within a parade of shops. The appeal relates to the ground floor of the building which has a shuttered front with 'Eastpark Chippy' on the fascia above. It is common ground that the use of this part of the building on 20 March 2013 fell within one of the use classes required in order to benefit from the permitted development rights under Class M.
5. The proposal involves the conversion and change of use of the rear two thirds of the ground floor into 3 dwellinghouses in the form of flats. The term dwellinghouse is not defined in the GPDO or in the Town and Country Planning Act 1990. Case law though holds that the distinctive characteristic of a 'dwellinghouse' is its ability to afford those who use it the facilities required for day to day private domestic existence¹.
6. The three proposed flats each consist of a single room with an en-suite shower and toilet separated from the rest of the room by a curtain. In size the floor areas of the units of accommodation would vary from 7.7 square metres (sqm) to 9 sqm.
7. In order to maximise the available space, an elevated bed is shown in all three flats. On the basis of the submitted information this would provide sufficient space beneath for dining. However, the kitchenette in each flat would be far too small to provide sufficient space to accommodate a sink, cooking facilities and an adequate area for food preparation. Once the space taken up by the dining area, kitchenette and space for moving around within the flats is allowed for, what is left would also be too small to provide a living area that could accommodate furniture, such as an arm chair and television, whilst also providing adequate space for clothes storage and other personal possessions that a small home should be able to accommodate.
8. Two storerooms would be provided. As they though would be located outside to the rear of the back yard they would be unsuitable for the storage of day to day items that need to be available within a dwellinghouse such as food or clothing. Moreover, as they would need to be shared they would not provide a private facility for each flat.
9. Given the very limited dimensions of the proposed flats, I am not persuaded that an alternative internal layout could be achieved that would accommodate the facilities necessary whilst also providing sufficient room to move.
10. Taking all these matters into account, I therefore conclude that the three flats proposed are too small to provide the facilities required for day to day private existence and so would not constitute a dwellinghouse. Accordingly, they would not be permitted development under Class M.

Flood risk

11. The rear part of the appeal site is within Flood Zone 2 and is in a critical drainage area. On the basis of the submitted plans, access to and from the flats would be via a ginnel to the side of the building and its back yard. As a result, as made clear on the Council's application form, in accordance with Schedule 2, Part 3, Paragraph W(2)(e) of the GPDO a flood risk assessment specific to the site is required.

¹ Gravesham BC v SSE & O'Brien [1984] 47 P&CR 142: [1983] JPL 307

12. The assessment that has been submitted falls far short of what could reasonably be considered to be acceptable: it fails to identify the sources of flooding that the property is at risk from; and does not estimate the level of floodwater with an allowance for climate change. As a result, it is not possible to determine if the flood resistance and resilience measures proposed, such as finished floor levels, would protect the proposed flats in the event of flooding. Most importantly though should flooding occur the information submitted fails to identify a safe route to higher ground out of the flood affected area.
13. For the reasons given above, I therefore conclude that prior approval is required in relation to flood risk and that on the basis of the information that has been submitted such approval was correctly refused.

Conclusion

14. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector