
Appeal Decision

Site visit made on 12 July 2016

by Andrew McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 September 2016

Appeal Ref: APP/Q5300/W/16/3148130

8 Bull Lane, Edmonton, London N18 1TQ

- 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 O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Trustees Ltd c/o Allen Planning Ltd against the decision of the Council of the London Borough of Enfield.
 - The application Ref 15/03793/PRJ, dated 17 August 2015, was refused by notice dated 14 October 2015.
 - The development proposed is described as change of use of offices (Class B1a) to form 21 apartments.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Part 3, Schedule 2, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) (as amended) for the change of use of offices (Class B1a) to form 21 apartments at 8 Bull Lane, Edmonton, London N18 1TQ in accordance with the terms of the application Ref 15/03793/PRJ, dated 17 August 2015, and the plans submitted with it, subject to the standard conditions set out in Paragraph W(12) of the GPDO.

Procedural Matters

2. The application form does not include a date of declaration or submission. The appellant states that the application was made on 17 August 2015. The Council has provided evidence to show that the application was received and validated on 18 August 2015. The latter date would mean that the expiry of the 56 day period would be on 13 October 2015. The Council has confirmed that the Decision Notice was issued on 14 October 2015.

Main Issues

3. I consider the main issues of the appeal to be;
 - whether the proposal satisfies the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 3, Class O of GPDO, having particular regard to Paragraph O.1;
 - if so, whether planning permission is deemed to have been granted by reason of the timing of the Council's Decision; and
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- whether prior approval would be required in respect of the matters set out in Paragraph O.2 of Schedule 2, Part 3, Class O of the GPDO.

Reasons

Permitted development criteria

4. The provisions of the GPDO enable certain types of development to take place without the need for specific planning permission, providing certain criteria are met. Provision exists under Schedule 2, Part 3, Class O of the GPDO for the change of use of a building falling within Class B1a (office) to Class C3 (dwellinghouse), subject to certain limitations.
5. Paragraph O.1 of the GPDO sets out the situations whereby development would not be permitted. The Council refer to criterion (b) where the building was not used for a use falling within Class B1(a) (office) on (i) 29 May 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. That requirement is a pre-requisite of permitted development in this case, regardless of the date of the Council's notification.
6. In refusing the application, the Council considered that the proposal does not meet the criteria of Class O of the GPDO by failing to demonstrate, through a certificate of lawful development, that the building has been used as an office for 10 years in order to establish the benefit of permitted development for the change of use.
7. The appellant refers to an implemented planning permission Ref: TP84/1166¹ which indicates that the building the subject of this appeal has an extant planning approval for office use granted in 1984. The description of that planning permission does not specifically refer to office use although this clearly forms part of the proposed development. From the drawings submitted with that application, it is clear that the relevant part of the building relating to this appeal was proposed to be in office use. Notwithstanding this, I note that this supporting evidence was not submitted to the Council when the application was made.
8. Furthermore, statutory declarations by the Managing Director of the previous owner of the premises and the Company Secretary of the current owners have been submitted. These statements set out that the office use was approved between 1984 and 2000 and that such use continued under the new ownership of the premises until the vacation of the building in 2015. This evidence also indicates that the building was in office use on 29 May 2013. The Council has submitted no evidence to refute this.
9. The Council's requirement for a certificate of lawful development is not the only method of demonstrating the use of a building. Whilst the requirement for such a certificate is based in legislation², so too are other circumstances including the passage of time.³ In this case more than 10 years have passed which would deem the use immune from enforcement action, whether or not a certificate of lawful use had been gained.

¹ Appendix 3 – Appellant's Statement of Case

² Section 191 of the Town and Country Planning Act 1990

³ Section 171B of the Town and Country Planning Act 1990

10. Based on the information available to me, and on the balance of probabilities, I conclude that the premises the subject of the prior approval application were in B1(a) use on 29 May 2013, or when last in use prior to that date. It is further concluded that the application is therefore for development that would be permitted under Class O of the GPDO.

Timing of the Council's Decision

11. Paragraph W of the GPDO sets out the procedure for prior approval under Part 3. Paragraph W(11)(c) provides that development must not begin before the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused. That sub-paragraph (2) details the information that should accompany the application. The appellant claims that the 56 days had expired before the notification was issued.
12. The application was made by the appellant on 17 August 2015 and received and validated by the Council on 18 August 2015. Therefore, in accordance with Paragraph W(11) of Part 3 of the GPDO, the 56 day period from the day when the Council received the application expired on 13 October 2015. This is not disputed by the Council and is acknowledged in an email dated 26 October 2015, which states that the Decision Notice was issued on 14 October 2015, the day after the expiry date.
13. Whilst the Council say the timing of the decision is not relevant as the application should not have been validated, there is no provision for such an approach under the GPDO. Paragraph W(11) is clear that the 56 days commence from the date on which the application was received by the local planning authority. I appreciate that the decision on the application was made on 13 October 2015. However, the appellant was not notified of that decision, as required by Paragraph W(11), until the following day which fell outside of the 56 day period.
14. Therefore, based on the information provided and having regard to the wording and requirements of the Order, I conclude that the 56 days should be considered as starting from the acknowledged date of the Council's receipt of the application, 18 August 2015, and would therefore have expired on 13 October 2015. In the absence of a written notice under Paragraph W(11) by that date, prior approval is deemed to have been granted.

Matters set out in Paragraph O.2 of the GPDO

15. On the basis of the findings above, as the proposal is deemed to be permitted development, it is therefore not necessary to consider the matters relating to the contamination risks and transport and highways impacts of the proposed development.

Other Matters

16. I acknowledge the comments made by an interested party relating to the suitability of the premises for conversion to residential accommodation. However, the conversion is permitted development under the GPDO, conditional only on matters which require prior approval. Therefore, I have determined the appeal on that basis.

Conclusion

17. The proposal is permitted development under Schedule 2, Part 3, Class O of the GPDO and notice was not served within the 56 days required under Paragraph W(11) so that planning permission is deemed to have been granted on the expiry of that 56 days on 13 October 2015.
18. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Andrew McCormack

INSPECTOR