

Appeal Decision

Site visit made on 9 November 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/J4525/W/16/3146210

84 Ryhope Road, Grangetown, Sunderland, SR2 9QE

- 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 J of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Ms Cora Leonard against the decision of Sunderland City Council.
 - The application Ref 15/01445/PCS, dated 10 June 2015, was refused by notice dated 3 September 2015.
 - The development proposed is described as "proposed development to teach youngsters in the area dance and performance arts. Approx pre school 2hrs morning 10-12, 2 hrs afternoon 1-3, after school hours 4-8 pm. Parking behind building, checked with Alexandra private car park owners, customers can use parking if necessary, spoke to neighbours all happy to have a community interest company in area."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above is taken from the application form. It is clear from the submitted documentation that the development proposed was for the change of use from a bank (Class A2 use) to a dance studio (Class D2 use).
 3. The appeal form indicates that the reason for the appeal is that the Council refused planning permission. However, the application and subsequent refusal were made in relation to the provisions of Schedule 2, Part 3, Class J of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of a building from a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the schedule to the Use Classes Order to a use falling within Class D2 (assembly and leisure) of that Schedule. Accordingly, I have dealt with the appeal on this basis.
 4. At Section C of the appeal form the appellant gives the date of the application as 31 May 2015. However, the date of the declaration on the application form is 10 June 2015 and this is the date I have used in the heading above. The Council's decision notice states the application was received on 9 July 2015.
 5. The Council indicates that due to an administrative error a duplicate case was created with a different application reference. However, it has confirmed that
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the correct application reference is 15/01445/PCS as detailed in the heading above.

6. From the evidence before me and from what I saw at my site visit it appeared that the use of the building as a dance studio had already commenced. The appellant has confirmed this although the Council indicates that at the time of the prior notification submission no use had commenced.

Reasons

7. Paragraph J.2 (1) of Schedule 2, Part 3 of the GPDO indicates that Class J is permitted subject the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to (a) noise impacts of the development, (b) impacts of the hours of opening of the development, (c) transport and highways impacts of the development, and (d) whether it is undesirable for the building to change to a use falling within Class D2 (assembly and leisure) of the Schedule to the Use Classes Order because of the impact of the change of use. It also indicates that the provisions of paragraph W (prior approval) of Part 3 apply in relation to that application.
8. Paragraph W (11) of Part 3 specifies that the development must not begin before the applicant has been notified by the Council that prior approval is either not required or has been granted or alternatively, that a period of 56 days from the date on which the application was received by the Council has expired without it giving notice that prior approval has been granted or refused.
9. There is no suggestion in this case that the Council failed to notify the applicant of its decision within the specified time period. However, there is no provision to allow for an exception to the legislative requirements in the GPDO that the development must not begin before the applicant has been notified by the Council that prior approval is either not required or has been granted. Therefore, given the wording of paragraph W (11), it is concluded that when as in this case, development has already begun, prior approval cannot be given and the appeal must therefore be dismissed for this reason.
10. For the reasons given above, and having considered all other matters raised, I conclude that the appeal is dismissed

Beverley Doward

INSPECTOR