
Appeal Decision

Site visit made on 9 November 2016

by B Bowker Mplan MRTPI

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

Decision date: 12 January 2017

Appeal Ref: APP/P4605/W/16/3156549

640 Bristol Road, Selly Oak, Birmingham B29 6BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Mohamad Ghalatian against the decision of Birmingham City Council.
 - The application Ref 2016/01084/PA, dated 4 November 2015, was refused by notice dated 1 April 2016.
 - The development proposed is prior approval for change of use from Retail (use Class A1) to Café (Use Class A3).
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Decision

1. The appeal is dismissed.

Procedural matter

2. Comments were sought from the parties regarding the commencement of the proposed use operating at the site in the context of Paragraph W of Class V of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) (as amended). Accordingly, the appeal has been determined taking into account comments received on this matter.

Main Issue

3. The main issue in the appeal is whether or not the development is permitted development under Schedule 2, Part 3, Class C of the GPDO.

Reasons

4. Paragraph W of Class V of the GPDO sets out the procedure for prior approval applications made under Part 3 and includes procedural conditions, limitations and restrictions necessary for development proposals to meet in order to be considered permitted development.
 5. Of relevance, Paragraph W (11) sets out a number of conditions that must be met before development begins on site. In addition, Schedule 2, Part 3, Class C.2 requires the developer to apply to the local planning authority for a determination as to whether prior approval will be required before the beginning of development.
 6. At the time of my site visit, I saw that the proposed use was already operating from the appeal site. In addition, the Council's Delegated Report states that
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the proposed use was already operating from the site at the date of the officer's site visit made on 16 February 2016. Furthermore, the appellant accepts that the proposed use is already operating from the site. The decision notice, dated 1 April 2016, states the received and valid date for the application as 8 February 2016. As the decision was issued 56 days following validation of the application, the Council determined the application within the required timescale.

7. Drawing the above together, based from the evidence before me, the proposed use was already operating at the site before the Council had determined the prior approval application. Therefore by definition, prior approval cannot be given and the proposal should be dismissed under the terms of paragraph W (3) of the GPDO.

Other matters

8. A number of benefits are put forward in support of the appeal and the appellant considers that the proposal meets local and national planning policy. I appreciate that the appellant has little knowledge of the planning system and that pre-application advice was sought from the Council. However, these considerations do not alter the facts of the case as outlined above.
9. It is also put to me that the appeal could be determined as a change of use planning application. However, the proposal was submitted and determined under Schedule 2, Part 3, Class C of the GPDO. Consequently, my determination of the proposal must be as it was submitted to and dealt with by the Council.

Conclusion

10. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

B Bowker

INSPECTOR