
Appeal Decision

Site visit made on 6 December 2016

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 12 January 2017

Appeal Ref: APP/T5720/W/16/3158438

Unit 1A, 43 Durnsford Road, London SW19 8GT

- 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) (GPDO).
 - The appeal is made by Joseph Homes Ltd against the decision of the Council of the London Borough of Merton.
 - The application Ref 16/P1252, dated 1 April 2016, was refused by notice dated 26 May 2016.
 - The development proposed is described as: "Prior approval for a change of use at ground floor from Class Use B1(a) (Office) to Class Use C3 (Residential) to form 2 flats."
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Decision

1. The appeal is allowed and permission is deemed to have been granted.

Application for costs

2. An application for costs was made by Joseph Homes Ltd against the Council of the London Borough of Merton. This application is the subject of a separate Decision.

Procedural Matters

3. The Council issued a decision notice dated 26 May 2016 stating that prior approval was refused. No reason for refusal was specified in the decision notice. The Council has since clarified that it refused prior approval on the basis that no evidence had been submitted with the application to demonstrate that the ground floor of the building had been fitted out and used as offices. I have determined the appeal on this basis.
 4. Part 3, Class O of Schedule 2 of the GPDO permits the change of use of "offices to dwellinghouses", subject to certain conditions and limitations. Under O.1 (b), development is not permitted if the building was not used for a use falling within Class B1 (a) (offices) of the Schedule to the Use Classes Order 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 and must be accorded with regardless of the date of the Council's notification. I have, therefore, considered this matter first in my reasoning below.
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5. Paragraph W. of the Order sets out the procedure for prior approval under Part 3, and 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 must accompany the application. The appellant claims that the required information was submitted and 56 days had expired before they were notified of the Council's decision. I have considered this matter below.

Main Issues

6. The main issues are:

- Whether the proposal satisfies the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 3, Class O.
- If so, whether planning permission is deemed to have been granted by reason of the timing of the Council's decision.

And:

7. If planning permission is not deemed to have been granted, whether the impact of the development is such as to require refusal of prior approval under paragraphs O.2 and W.(3).

Reasons

Permitted Development

8. In addition to the requirements set out in the Procedural Matters above, the use must be lawful (Article 3 (5) (b)). Planning permission was granted¹ for a mixed use development, which included offices, Class B1 (a). The permission was implemented and a building was constructed in 2006, now 43 Durnsford Road, which had office accommodation on several floors including the lower ground floor.
9. Although the appeal premises were built as offices, and hence the use is lawful, it must also be demonstrated that the use was occurring on the trigger date, which in this case is 29 May 2013. I have been supplied with a decision notice confirming that prior approval was not required for a change of use from office to dwellinghouse at Unit 1A, 43 Durnsford Road². In confirming that prior approval was not required, the Council accepted that offices were in use at the appeal premises on 30 July 2013. Therefore, I am satisfied that the use was occurring on the trigger date.
10. The extent of the appeal premises, Unit 1A, was clear at the time of my site visit. It had a significant number of power outlets and data points around the walls, and the layout and fittings were that of an office, B1 (a). There was no evidence of any other use having occurred.
11. I conclude on this issue that, on the balance of probabilities based on the information available, that the premises that are the subject of the prior approval application were in B1(a) office use on 29 May 2013 and remain in

¹ Ref 03/P2407 dated 20 October 2005

² Ref 13/P1869 dated 30 July 2013

B1(a) office use. Therefore, the application is for development that would be permitted under Class O of the GPDO.

Timing of the Council's Decision

12. The application was made on 1 April 2016. The appellant confirms that the information required by W.(2) was submitted, along with details of the transport and highways impacts of the development, contamination and flooding risks and noise, in accordance with the requirements of Paragraph O.2. The officer's delegated report states that the application was valid from 1 April 2016. Therefore, having received a valid application for prior approval, the Council had 56 days to make a decision to approve or refuse prior approval, and notify the applicant. The decision notice is dated 26 May 2016, which is within the 56 days. However, the appellant states that the required notification has not been received and evidence to support this claim has been provided.
13. I have considered the emails dated 23 May 2016 and 26 May 2016 from the appellant's agent to the Council. The first is seeking an update on the application, and the second is seeking further information on the reason for refusal, which the appellant had become aware of after noticing that the Council's website stated the application was recommended for refusal. It appears that the decision notice was subsequently uploaded, but as explained in the Procedural Matters above, the reason for refusal was not included. The Council responded, after several follow up emails, to provide the reason for refusal. However, there is no evidence that a decision notice was issued.
14. Therefore, on the basis of the information provided and having regard to the wording and requirements of the GPDO, it is concluded that the 56 days would have expired before the appellant was notified of the Council's decision. In the absence that written notice under paragraph W.(11) by that date, planning permission is deemed to have been granted.

Impact of the development

15. On the findings above it is not now necessary to consider this further. It is nevertheless noted that the Council has not raised any concerns in relation to the matters listed in O.2 (1).

Conditions

16. Paragraph O.2 (2) states that development under Class O is permitted subject to the condition that it must be completed within a period of three years starting with the prior approval date. Further standard conditions are set out in paragraph W. (12).

Conclusion

17. The proposal is permitted under Schedule 2, Part 3, Class O of the GDPO and notice was not served within the 56 days required under paragraph W (11). Planning permission is deemed to have been granted. The appeal is therefore allowed.

Debbie Moore

Inspector