
Appeal Decision

Site visit made on 5 June 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 07 June 2017

Appeal Ref: APP/Y3425/W/17/3167474

WL Mets Ltd, The Cottage Stores, Stone Road, Tittensor, Stoke on Trent, Staffordshire ST12 9HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class T of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015
 - The appeal is made by Mr Michael Gold against the decision of Stafford Borough Council.
 - The application Ref 16/25285/PSN, dated 18 November 2016, was refused by notice dated 3 January 2017.
 - The development proposed is the change of use from business (Class B1) to a registered nursery.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the description of development from the Council's decision notice as this more succinctly describes the appeal proposal.
3. I was able to see, as part of my site visit, that the ground floor of the appeal site was already in use for childminding purposes in accordance with the details shown on drawing 18/11/2016 Rev 1. There were two children occupying the ground floor of the premises at the time of the site visit. The first floor was being used for residential purposes.

Main Issues

4. The main issues are (i) whether or not the proposal is permitted development and (ii) if so, the transport and highways impacts of the development.

Reasons

Permitted Development

5. The proposal is to use the ground floor and first floor of the appeal buildings as a registered children's nursery. There is dispute between the main parties as to whether or not the lawful use of the whole of the building is a mixed use or whether or not the lawful use of the whole of the building is use class B1. If the lawful use of the building is a mixed one then the permitted development rights conveyed by Class T of Schedule 2 of Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) would not apply.
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6. I have carefully considered the evidence submitted by the main parties in respect of the use of the building. Whilst there is no dispute between the main parties that the ground floor of the premises can lawfully be used for B1 use class purposes, it is not certain whether or not the lawful use of the upper floor is that of an independent/self-contained residential unit or that of an ancillary residential unit.
7. The lawful use of the building is crucial as to whether or not the proposed use would be development permitted by Class T of Part 3 of the GPDO. In circumstances where the use is disputed, such as in this case, the proper means of conclusively establishing the lawful use is through the consideration of an application for a Certificate of Lawful Existing Use or Development (LDC). This appeal is against the refusal of an application for prior approval, not an application for a LDC and is not the means through which such a certificate could be issued, which is, in effect, what would happen if I were to accept that the whole building is in a B1 use. There appears to have been no application submitted for a LDC and this is what the appellant would need to do in order to have the evidence on the previous use of the first floor considered in this light. I am not, therefore, in a position to come to a conclusion on the lawful use of the site and consequently cannot conclude that the proposal would be development permitted by the GPDO.
8. In addition to the above, the appellant's agent has confirmed that *"the tenant is a registered childminder but had not started to use any part of the premises for this purpose before the application was made to the Local Planning Authority. She does now do childminding on the premises, but is currently only renting the first floor living accommodation and is only allowed to use that part of the premises for childminding"*. My site visit actually revealed that the ground floor was now in use for childminding purposes. The appellant's agent has also commented that *"the first floor is let as domestic accommodation, the tenant lives there and she is currently a home based childminder. She is currently looking after up to 3 children at any one time for child minding purposes but the number can vary from day to day. She informs me that on one day for example she is only looking after one child"*.
9. Paragraph W(11) / A.4(10) of Part 3 of the GPDO represents a restriction or limitation on the commencement of development. If the applicant / appellant began development before a decision was issued by the local planning authority (and before the expiry of the relevant period), the local planning authority (or the Inspector on appeal) can refuse the application under paragraph W(3) / A.4(3) on the basis that the development is no longer capable of falling within the permitted development right. This also applies if development is begun prior to the determination of the appeal. I am not certain whether reference to childminding is the same as a registered nursery and hence whether or not the proposed use has therefore commenced in part of the building. If this were the case, then permitted development rights would not apply and it would be necessary for a full planning application to be submitted. However, given my conclusion relating to the uncertainty surrounding the lawful use of the whole of the appeal building, it has not been necessary for me to reach a final conclusion on this matter.
10. For reasons outlined above, I am unable to conclude that the proposal would be permitted development.

Transport and Highway Impacts

11. As I have found that I am not in a position to come to a conclusion on the lawful use of the site, and consequently cannot conclude that the proposal would be development permitted by the GPDO, the detailed prior approval matters, including transport and highway impacts, do not fall to be considered as part of the determination of this appeal.

Other Matters

12. I note that a number of representations have been made by other interested parties. However, as the appeal proposal is not permitted development, it has not been necessary for me to consider these representations any further.

Conclusion

13. For the reasons outlined above, and taking into account all other matter raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR