
Appeal Decision

Site visit made on 14 November 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 1st December 2017.

Appeal Ref: APP/H1515/W/17/3181027

Upper Floors, 125-127 High Street, Brentwood, CM14 4RX

- 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.
 - The appeal is made by Mr U Eisenstein against the decision of Brentwood Borough Council.
 - The application Ref 17/00926/PNCOU, dated 9 June 2017, was refused by notice dated 26 July 2017.
 - The development proposed is change of use of offices (Class B1a) to form 8 apartments.
-

Decision

1. The appeal is dismissed.

Main Issue

1. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Reasons

2. The appeal relates to the conversion of the upper floors of 125-127 High Street into 8 flats. At my site visit I saw that the works proposed as part of the appeal had already been substantially progressed, with 8 units created with fitted kitchens and bathrooms. Only windows remained to be installed. The site already benefits from prior approval (reference 15/00760/PNCOU) which remains extant until July 2018. While full details of the approved scheme have not been provided, it is understood that the commenced work represents an alternative layout for the 8 flats already approved.
3. The Council assessed the extension against the provisions of Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) and concluded that prior approval could not be granted due to concerns regarding the impact of noise upon the intended occupiers.
4. However, in order to benefit from the provisions of Schedule 2, Part 3, Class O of the GPDO, the developer must apply to the local planning authority for a determination before beginning the development. This is clearly set out under O.2 of the GPDO which states that "*Development under Class O is permitted subject to 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) transport and highways impacts of the development;*
- (b) contamination risks on the site;*
- (c) flooding risks on the site; and,*
- (d) the impacts of noise from the commercial premises on the intended occupier of the development.*

and the provisions of paragraph W (prior approval) apply in relation to that application” [my emphasis].

5. Paragraph W (11) also states that “*the development must not begin before the occurrence of one of the following—*
 - (e) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;*
 - (f) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or*
 - (g) 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.” [my emphasis].*
6. While the Council’s sole concerns relate to noise, the regulations are clear that prior approval cannot be given for development that has already begun, whether or not it is wholly or partially completed.
7. Consequently, it is development for which an application for planning permission is required. Such an application would be a matter for the local planning authority to consider in the first instance. I have not therefore considered the matter of noise effects further.

Conclusion

8. The proposal would not comply with the limitations and restrictions specified as being applicable to the proposed development under paragraphs O.2 and paragraph W. Accordingly, I therefore conclude that it could not benefit from deemed permission under Class O of Schedule 2, Part 3 of the GPDO 2015 (as amended).
9. For the reasons given above, I conclude that the appeal should be dismissed.

C Searson

INSPECTOR