



Appeal Decision

Site visit made on 25 June 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Appeal Ref: APP/K2230/W/19/3226305

19-20 King Street, Gravesend, Kent DA12 2EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Adnan Ali against the decision of Gravesham Borough Council.
 - The application Ref 20181225, dated 23 November 2018, was refused by notice dated 15 January 2019.
 - The development proposed is the change of use of the first and second floor from B8 to flats C3.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site comprises a three storey mid terrace building at 19-20 King Street, and a two storey building fronting onto Queen Street, which the Council refer to as 1A Queen Street in the Planning Officer's report. There is internal access between the two buildings at ground floor level only. The appeal relates to both elements of the building, the ground floor of which has a hot food takeaway use.
3. I saw on my site visit that both the ground and first floors of 1A Queen Street were in the process of being refurbished. A separate access from the street to the first floor was present, and the first floor was being fitted out with internal partitions, two bathrooms containing WC, basin and shower, as shown on Drawing Number A105 Proposed Floor Plans. I have dealt with the appeal on the basis that development has commenced, insofar as it relates to 1A Queen Street.
4. The application the subject of this appeal was determined under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), as set out above. Paragraph P.1 sets out limitations to the permitted development right, while paragraph P.2 sets out the conditions that apply. Article 3(1) of the Order grants planning permission for the classes of development described as permitted development in Schedule 2, subject to the provisions of Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

Main Issues

5. The Council refused the application on the basis that it was made after the development had commenced, contrary to the condition in paragraph P.2; that the building was not in use for a B8 (storage or distribution) use on 19 March 2014, contrary to paragraph P.1(a); and that the requirements of Article 3(1) have not been complied with in relation to the Habitats Regulations, in terms of the likely effects of the proposal on European Protected Sites.
6. It therefore follows that the main issues are:
 - Whether the conditions under paragraph P.2 have been complied with;
 - Whether the proposals satisfy the requirements of the Order with regard to being permitted development under paragraph P.1(a); and
 - Whether the proposals satisfy Article 3(1) of the Order with regard to the Habitats Regulations.

Reasons

Compliance with conditions for permitted development

7. Paragraph P.2 of the Order states that 'Development is permitted by Class P subject to the condition that before beginning the development, the developer must – (a) submit a statement, ...; (b) apply to the local planning authority for a determination as to whether the prior approval of the authority will be required...' The Council states that the change of use had already occurred before the application to the Council was made.
8. The Council's evidence indicates that works to the first floor of 1A Queens Road had commenced at the time of the Officer's visits to the premises on 27 September 2018, 22 October 2018 and 3 January 2019. It is stated that internal works had commenced, with the internal staircase having been removed and internal partitions had been erected. This accords with what I saw on my site visit.
9. The appellant maintains that the works that have commenced on site in relation to 1A Queens Road do not constitute a commencement of the development for which prior approval is sought, but are an internal refurbishment of the storage area. I saw on site that the works have resulted in the subdivision of the first floor space to create individual rooms, in the layout shown on Drawing Number A105. The external access to Queens Road has been created, as shown on Drawing Number A104. These are works related to the use of the first floor as two flats as proposed, and I have seen no evidence to substantiate the appellant's assertion that they are related to the internal refurbishment of the first floor for storage. I therefore conclude that the development has commenced; consequently, the conditions under paragraph P.2 have not been complied with, and the proposal is not permitted development.

Permitted development

10. Paragraph P.1(a) sets out that development is not permitted by Class P if the building was not used solely for a storage or distribution centre use on 19 March 2014 or 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.

11. The larger part of the site comprises a terraced building which faces onto King Street, with a hot food takeaway with a seating area at ground floor. There is an internal access to the rear of the takeaway counter to internal stairs leading to the first and second floors. Behind the counter and food preparation area there is a link to the smaller element of the building which has a frontage to Queen Street. There is now a separate access from Queen Street to the self-contained first floor but the existing floor plans¹ indicate that there was previously only internal access through the ground floor to the first floor.
12. At the time of my visit, the first floor above the part of the building fronting onto King Street was in use for the storage of pizza boxes and contained some refrigeration equipment, whilst the second floor was empty. The first floor above the Queen Street frontage was in the process of being fitted out internally, and there was no evidence of use for storage.
13. The appellant has provided details of the valuation of the building by the Valuation Office Agency, which indicates that the upper floors of both elements of the building were considered, in 2009, to be in use for internal storage. A Valuation Report² from 2012 initially describes the upper floors of both elements as being ancillary storage/office use, while a more detailed description of the accommodation identifies the upper floors of 19-20 King Street as being a store room, while the first floor of 1A Queen Street is described as a storeroom/admin office. It is notable that the first floor of 1A Queen Street was at that time accessed internally through the ground floor of the building.
14. The parties agree that the granted application³ for prior approval for the change of use of the upper floor from B1a to C3 for 19-20 King Street erroneously identified the upper floors of both elements of the building as being in office use, and that the Council's Planning Officer did not visit the site. The appellant maintains that the appeal site has been used for storage since 2012, and has paid business rates on this basis.
15. However, the lack of an independent access to the upper floors, and the evidence provided by the appellant and the Council, all indicate that the upper floors were in use for purposes ancillary to the main use of the building as a takeaway restaurant, on 19 March 2014. There is no evidence that the upper floors of the building were in 'sole' use as a storage or distribution centre use as required by paragraph P.1(a) on that date. As a result, the proposal is not permitted development.

Compliance with Article 3(1) of the Order and the Habitats Regulations

16. Article 3(1) of the Order effectively imposes a pre-commencement condition on all development that is permitted by the Order which would affect a site which is protected by the Habitats Regulations. This prevents permitted development from taking place until the Local Planning Authority is satisfied that the development would have no adverse effect on the integrity of the protected site. The appeal site is within 6km of the North Kent Special Protection Areas (SPAs) and Ramsar Site, which are afforded protection under the Habitats Regulations. The Council considers that the proposal is likely to have significant

¹ Drawing Number A103

² Knight Freeman Chartered Surveys Reference KF/10558/SBK dated 29 June 2012

³ Ref 20151092

adverse effects on the SPAs and Ramsar site, either alone or in combination with other plans or projects.

17. As a result, under Article 3(1) of the Order and regulations 75 to 78 of the Habitats Regulations, the development must not be begun before the developer has received written notice of the approval of the local planning authority. I have seen no evidence that this written notice has been sought or given, and I have already concluded that the development has commenced. The proposal does not therefore satisfy the requirements of Article 3(1) of the Order and is not permitted development.

Conclusion

18. For the reasons given above, I have concluded that a change of use has occurred that is not permitted development. As a consequence, there is no need to consider the planning merits of the development in relation to any of the matters for which prior approval can be required.
19. Accordingly, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR