



Appeal Decision

Site visit made on 25 July 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal Ref: APP/D5120/W/19/3226884
325 Bexley Road, Erith DA8 3EX

- 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 C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Ms V Adebiyi against the decision of the Council of the London Borough of Bexley.
 - The application Ref 19/00111/PRIOR, dated 9 January 2019, was refused by notice dated 12 March 2019.
 - The development proposed is described as "Prior Approval Notification for a change of use of ground floor of the property at 325 Bexley Road, Erith, DA8 3EX from Use Class A1 (Retail) to Use Class A3 (Restaurant) together with installation of an extraction flue to the rear elevation. Please see and read the documents attached: 1. Planning Statement. 2. DFRA Odour Assessment. 3. Noise Assessment".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms V Adebiyi against the Council of the London Borough of Bexley. This application is the subject of a separate Decision.

Preliminary Matters

3. Paragraph C.(b) of Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permitted development rights to change the use of a building from a shop to a restaurant or café, together with building or other operations for the provision of facilities for ventilation and extraction (including the provision of an external flue) reasonably necessary for that use.
4. I have considered the appeal on the basis of the development proposal as described on the application form, which refers to both the change of use and the installation of an extraction flue.

Main Issue

5. The main issue is whether the proposal would comply with the express terms of permitted development set out in the GPDO.

Reasons

6. Paragraph C.2 of Class C sets out that development is permitted under Class C(b) subject to the condition that before beginning the development, the developer must apply to the local planning authority (LPA) for a determination as to whether the prior approval of the authority will be required as to various matters. In this case, the development applied for includes operations for the provision of facilities for extraction associated with the proposed use.
7. At the time of my visit, works to install kitchen equipment at the premises had been carried out, including an extraction hood above part of the proposed cooking area. The appellant's Noise Impact Assessment (NIA) describes the kitchen extract hood as having a motor which 'vents directly to outside, above the flat roof' of the property's ground floor rear projection. The NIA also includes a photograph showing the external extract duct referred to, which projects from the rear wall of the building in a location consistent with the bottom of the proposed extraction flue as shown on the submitted drawings, and a photograph indicating the route of the proposed extraction flue extending upwards from that duct.
8. I have subsequently sought clarification and comments on this matter from the appellant, who has confirmed that those works which have been carried out at the premises, and which are referred to in the NIA, comprise part of the extraction system for which prior approval is sought. The appellant advised that the works were carried out in early 2018, but that they were ceased and remain incomplete following the Council's refusal to grant planning permission and, subsequently, prior approval for the development.
9. The restaurant use has not commenced, and the external flue referred to in the application description has not yet been installed. However, that flue would connect to and extend directly from the extraction duct which has been installed. As such, the works which have been carried out to install extraction equipment at the premises to date are directly related to, and cannot be clearly severed from, the extraction flue and the restaurant use for which prior approval is sought. Whilst not complete, those works which have so far been carried out comprise a significant component of the extraction equipment which is proposed in association with the intended restaurant use, including an element which projects externally, beyond the building envelope. Accordingly, as a matter of fact and degree, I conclude that the development for which prior approval is sought has begun, and, on the basis of the evidence before me, that it commenced some time before the submission of the current prior approval application in January 2019.
10. The Council did not refer to the matter of works having commenced in its reasons for refusal, and the appellant has referred to the works being reversible. Nonetheless, I must determine this appeal, relating to an application for prior approval, on the basis of the current situation, and the specific conditions and requirements of the GPDO relating to such applications.
11. For the reasons given, I conclude that the development began before the application was made to the LPA for a determination as to whether prior approval was required. The conditions in Class C Paragraph C.2 have therefore not been met and the proposal would not comply with the express terms set out in the GPDO. The development therefore is not permitted under the terms

of the GPDO, and is development for which an application for planning permission is required.

12. As I have reached this conclusion, it is not necessary for me to consider whether the proposal would be acceptable with regard to the noise and odour impacts of the development, as referred to in the Council's reasons for refusal, or the benefits of the proposed development.
13. My attention has been drawn to a previous appeal decision relating to the change of use of the premises to a takeaway and the installation of extraction equipment¹. That decision also refers to some works having been carried out at the site. However, it related to an application for planning permission, not an application for prior approval under the terms of the GPDO. There is no provision in the GPDO for the retrospective grant of prior approval. I have considered the appeal before me on its own merits, and in accordance with the conditions relating to prior approval applications as set out in the GPDO.

Conclusion

14. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Jillian Rann
INSPECTOR

¹ Appeal ref: APP/D5120/W/18/3212346