



Appeal Decision

Site visit made on 27 January 2020

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2020

Appeal Ref: APP/G5180/W/19/3236364

2 Napier Road, Bromley BR2 9JA

- 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.
 - The appeal is made by Emkat Properties Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/00434/RESPA, dated 5 February 2019, was refused by notice dated 14 March 2019.
 - The development proposed is 'change of use of a building from office (use class B1) use to a use falling within Use Class C3 (Dwellinghouse) to provide 4 dwellings'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permits "*development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule*".
3. This is subject to a number of situations where such development is not permitted, listed under paragraph O.1 and the conditions in paragraph O.2. It is common ground between the parties that the proposed development would meet the requirements of paragraph O.1 and that as such it would represent permitted development under Class O.
4. Development under Class O is permitted subject to the condition set out in paragraph O.2 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 is required. Paragraph W(2) details the information that should accompany the application.
5. It is the Council's contention that the appellant had started development before submitting the prior approval application and therefore the conditions within paragraph O.2 of the GPDO are not met. As a consequence, in accordance with paragraph W sub-paragraph (3) the proposed development does not comply with the conditions, limitations or restrictions specified in Part 3, Class O.2 that

are applicable to the development in question and therefore prior approval may be refused.

Main Issue

6. Based on the above, the main issue is whether the development has commenced and, if so, whether it complies with Class O permitted development conditions.

Reasons

7. I have had regard to the submissions made by the Council and the appellant in relation to the extent of the works on site at the time of the Council's consideration of the prior approval application.
8. At my site visit I saw that the works required to convert the building to four dwellings including internal layout alterations, blocking up of external doorways and insertion of a new window in the rear elevation had been implemented. Furthermore, each of the 4 dwelling units were occupied. I am satisfied that the development I saw at my visit is essentially that shown on the drawing submitted with the prior approval application.
9. As a matter of fact and degree, and on the evidence that is before me, I therefore consider that, a Class C3 dwelling use is in operation and that a change of use from B1(a) office has occurred. The High court has held that prior approval cannot be granted for development that has already begun, whether or not it is wholly or partially completed. This applies even if the development was begun after the application was made or during the appeal process.
10. As the development has commenced the proposal does not meet permitted development conditions and cannot be considered through the prior approval procedure. Hence, it is not necessary for me to consider detailed matters set out in Schedule 2, Part 3, Class O, paragraph O.2 of the GPDO.

Conclusion

11. For the reasons set out above, I conclude that the appeal should be dismissed.

Diane Cragg

INSPECTOR