



Appeal Decision

Site visit made on 27 May 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2020

Appeal Ref: APP/Q5300/W/20/3246168

Ground Floor Front, 231 Whittington Road N22 8YW

- 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 M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr A Bard (Amber Investment Ltd) against the decision of the Council of the London Borough of Enfield.
 - The application Ref 19/03837/PIA, dated 7 November 2019, was refused by notice dated 9 January 2020.
 - The development proposed is the change of use of part ground floor from retail (A1) to 1 x 1-bed self-contained flat (C3).
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Decision

1. The appeal is allowed and prior approval is deemed to be given under the provisions of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of part of the ground floor from retail (A1) to 1 x 1-bed self-contained flat (C3) at the ground floor front of 231 Whittington Road N22 8YW, in accordance with the terms of application Ref 19/03837/PIA, dated 7 November 2019, and as shown on drawings Site Plan and Existing and Proposed Floor Plans submitted with it, subject to the relevant conditions of Class M.

Application for Costs

2. An application for an award of costs was made by Mr A Bard (Amber Investment Ltd) against the Council of the London Borough of Enfield. This application is the subject of a separate decision.

Main Issues

3. This application was submitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class M of the GPDO permits a change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule.
4. The Council's decision notice shows that it refused to give prior approval for three reasons which it considers relate to the conditions at M.2-(1) of Class M. However, paragraph W(11) to Schedule 2 Part 3 of the GPDO shows that this development must not begin before any one of a number of circumstances are met. One such circumstance at paragraph W(11)(c) is the expiry of 56 days

following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused. The appellant states that the Council failed to provide a decision within this time period and the development may therefore commence lawfully.

5. With regard to the above, the main issues are:
- whether the proposal would be permitted development under Class M, with particular regard to whether the 56 day period shown at paragraph W(11)(c) of Schedule 2 Part 3 of the GPDO has expired; and
 - if not, whether or not prior approval is required with regard to the conditions outlined at M.2-(1) of Class M.

Reasons

56 Day Period

6. From the evidence, the application for prior approval was submitted late on 7 November 2019. The appellant therefore states that the 56 day period commenced on the 8 November 2019 and expired on 2 January 2020. Given the Council issued its decision on 9 January 2020, he claims that this was done outside of this period and that the development may commence lawfully under paragraph W(11)(c) of Schedule 2 Part 3 of the GPDO.
7. However, the Council state that the original application did not meet its validation requirements. This is as the submitted site location plan did not appear to be to scale. Consequently, it requested a new site location plan, which was received on 13 November 2019. On this basis, the Council made the application valid on 14 November 2019 and therefore considers that it made its decision within the 56 day period which expired on 9 January 2020.
8. The question that therefore arises is whether the start of the 56 day period was the 8 November 2019 or the 14 November 2019. This matter centres on whether the originally submitted site location plan was suitable to meet the requirements of the GPDO. I proceed to consider this matter below.
9. Paragraph W of Schedule 2 Part 3 of the GPDO sets out what an application made under Class M must be accompanied by. This includes, at paragraph W(2)(b), 'a plan indicating the site and showing the proposed development'. There is no requirement that such plans should be to any particular scale, or that they should be scaled at all. Indeed, there is no specific requirement in the GPDO that sets any particular standard for plan drawing. In addition, the validity of a prior approval application does not depend upon the Council accepting it as a valid application. This is an objective question of law. Thus, the running of time is not dependent on the application being 'validated' by the Council.
10. The full suite of original application documents submitted by the appellant is provided at Appendix 2 to his Statement of Case. This included the site location plan and existing and proposed floor plans. Regardless of whether the site plan is to scale, it clearly shows the site of the proposed development which is edged in red. In addition, the proposed floor plans clearly show the development applied for, which in this case is simply the change of use of part of the ground floor of the appeal building to a residential dwelling. Accordingly,

I find that the original plans submitted by the appellant on 7 November 2019 were perfectly adequate to meet the requirements set out at paragraph W of Schedule 2 Part 3 of the GPDO.

11. Taking all of the above into account, the relevant 56 day period commenced on 8 November 2019 and expired on 2 January 2020. Consequently, I conclude that the Council failed to provide a decision within this period and prior approval is deemed to have been given under the provisions of paragraph W(11)(c) of Schedule 2 Part 3 of the GPDO.

Prior Approval

12. Given my conclusion in relation to the first main issue, there is no need for me to consider compliance with the conditions at M.2-(1) of Class M as it would not alter the outcome of the appeal.

Conclusion

13. The proposal is permitted development under Schedule 2, Part 3, Class M of the GPDO. This is as notice was not served within the 56 days required under paragraph W(11) so that planning permission is deemed to have been granted on the expiry of that 56 days on 2 January 2020. The appeal is therefore allowed.

M Heron

INSPECTOR