The Planning Inspectorate

Appeal Decision

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2020

Appeal Ref: APP/M9584/W/20/3246733
Unit 138, Omega Works, 4 Roach Road, London E3 2PA

- 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, 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 Mr Simon Roberts (Dlon Ltd) against the decision of London Legacy Development Corporation.
- The application Ref 19/00360/PNCOU, dated 23 August 2019, was refused by notice dated 24 October 2019.
- The development proposed is change of use from office to residential.

Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from office to residential at Unit 138, Omega Works, 4 Roach Road, London E3 2PA in accordance with the terms of the application Ref 19/00360/PNCOU, dated 23 August 2019, and the plans submitted with it (drawing nos. 19102-001, 100 and 101).

Procedural Matter

2. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. I have consulted the appellant and the local planning authority (the LPA) on this matter and neither has objected to the appeal proceeding on this basis.

Background and Main Issues

3. Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 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). This is subject to a number of situations where such development is not permitted, which are listed under paragraph O.1.

4. One of the LPA's reasons for refusal was that the proposal did not comply with paragraph O.1, because the appeal premises was not in a B1(a) use on 29 May 2013. However, as part of the application, the appellant provided a statutory declaration confirming that the unit was in B1(a) use between 28 May 2012 and 20 April 2017. A letter from a previous employee, and a copy

of his employment contract, have also been submitted with the appeal. In view of this evidence, the LPA has confirmed that it no longer contests this issue. It is therefore common ground between the parties that the proposal would be permitted by Schedule 2, Part 3, Class O of the GPDO.

5. Development permitted by Class O is subject to the conditions in paragraph O.2(1). One of these conditions requires that, before beginning the development, the developer must apply to the LPA for a determination as to whether prior approval is required as to certain specified impacts. The LPA has identified contamination and flooding impacts as matters requiring prior approval, and has refused to grant such approval.

6. Paragraph W of the GPDO sets out the procedure for applications for prior approval under Schedule 2, Part 3. Paragraph W.(11)(c) says that development must not begin before the expiry of 56 days following the date on which the application was received by the LPA without the authority notifying the applicant as to whether prior approval is given or refused. The appellant claims that the 56 days had expired before the notification or refusal was issued.

7. Therefore, the main issues are:

   a) Whether planning permission is deemed to have been granted by reason of the timing of the LPA's decision; and,

   b) If planning permission is not deemed to have been granted, whether prior approval as to the contamination and flooding risks on the site should be granted under Paragraphs O.2 and W.

Reasons

Timing of the LPA's decision

8. The application for prior approval was submitted to the LPA by e-mail on 23 August 2019. The covering letter stated that the submission included the application form, together with plans indicating the site and showing the proposed development. The fee for the application was paid on 27 August 2019. The LPA's acknowledgement letter dated 12 September 2019 confirmed receipt of the fee and stated that, if a decision was not made by 21 October 2019, the applicant would have a right to appeal. The LPA's decision notice refusing the application was dated 24 October 2019.

9. These facts are not disputed by the LPA, but it is claimed that the application was, in fact, not valid until hard copies of the plans were received on 4 September 2019. This being the case, it is argued that the 56-day determination period would have expired on 29 October 2019, and that the date stated in the acknowledgement letter was a clerical error.

10. Paragraph W.(2) of the GPDO sets out the requirements for applications for prior approval, which should be accompanied by, amongst other things, a written description of the proposed development; a plan indicating the site and showing the proposed development; and any fee required to be paid. The paragraph does not define what is meant by a written description, or in what format the plans should be provided. However, paragraph W.(2)(d) requires that a notification application must be accompanied by the developer's email address if the developer is content to receive communications electronically. The GPDO therefore clearly contemplates that the process may be electronic.

11. Furthermore, Article 2 (6) to (11) of the GPDO sets out the requirements that should be met when electronic communication is used for the purpose of fulfilling any requirement in the Order to send any statement, notice or other document to a recipient. Paragraph (11) clarifies that references in the Order to plans, drawings, notices or other documents, include references to such documents in electronic form. The LPA has not alleged that the plans submitted electronically failed the accessibility, legibility or permanence requirements of paragraph (7). The notification submitted to the LPA on 23 August 2019 therefore met the requirements of Paragraph W.(2) except for the fee. Once the fee had been paid on 27 August 2019, the application was complete.

12. Article 7 and Paragraph W.(11)(c) of the GPDO both make it clear that the 56 days for determination start on the day following the date on which the application was received by the LPA. Therefore, the 56-day period commenced on 28 August 2019 and expired on 22 October 2019.

13. Paragraph W.9 of the GPDO states that the LPA may require the developer to submit such information as it may reasonably require in order to determine the application. In this case, the LPA considered that hard copies of the plans were necessary. However, applying the principles established in *Murrell v SSCLG [2010]*[1], the receipt of these plans on 4 September 2019 did not restart the 56-day determination period. The LPA's formal decision notice was therefore sent after the 56-day notification period expired. Consequently, the application for prior approval is deemed to have been granted, subject to the relevant statutory conditions.

Contamination and flooding risks

14. Given my findings above, it is not necessary for me to consider whether prior approval as to the contamination and flooding risks on the site should be granted.

Conditions

15. Paragraph O.2.(2) of the GPDO attaches a condition to this type of development, requiring its completion within a period of 3 years, starting from the prior approval date. A condition relating to the commencement of development is therefore not necessary. Paragraph W.(12) also requires that the development must be carried out in accordance with the details provided in the application. Paragraph W.(13) enables additional conditions to be attached to grants of prior approval. The LPA has suggested three additional conditions, but as planning permission is already deemed to have been granted without the need for prior approval, there is no means to attach additional conditions beyond the standard ones.

Conclusion

16. As notice was not served within the 56 days required under paragraph W.(11), planning permission is deemed to have been granted on 22 October 2019. I therefore conclude that the appeal should be allowed.

Nick Davies
INSPECTOR

[1] [2010] EWCA Civ 1367