



Appeal Decision

Site visit made on 22 June 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th July 2020

Appeal Ref: APP/N1920/W/20/3245680

TSG House, Cranbourne Road, Potters Bar, EN6 3JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr B Rees of TSG Building Supplies Ltd. against the decision of Hertsmere Borough Council.
 - The application Ref: 19/1889/PD56 dated 27 November 2019, was refused by notice dated 15 January 2020.
 - The development proposed is conversion of existing offices (B1a) to residential (C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr B Rees of TSG Building Supplies Ltd. against Hertsmere Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed development satisfies the requirements of the Town & Country (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) with regard to being permitted development under Class O.

Reasons

4. Schedule 2, Part 3, Class O of the GPDO sets out that 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), to a use falling within Class C3 (dwelling houses) is permitted subject to various limitations and conditions. Article 4 of the GPDO allows a Direction to be made that removes the permitted development rights under a class or classes in the GPDO specified in that Direction. It can therefore have the effect that development described in prescribed classes, including Class O, shall not be carried out unless planning permission is granted for it. Both parties refer to a non-immediate Article 4 direction expected to come into effect in April 2020.
5. A copy of the Direction is before me dated 26 April 2019, coming into force on 27 April 2020. The Direction confirms that development consisting of a change of use of a building and any land falling within its curtilage from B1(a) to a use

class falling within C3, at a number of employment areas will not be permitted development. One of the areas listed and set out on an accompanying plan includes land within which the appeal site is located.

6. Amongst its terms, Article 4(2) of the GPDO sets out that an Article 4 Direction must be made before the date of prior approval occurs in order to have effect. As the Direction has come into effect and prior approval has not occurred before the date the Direction came into force, I have to take it into account. I have no reason to believe that the direction does not have effect. Therefore, I cannot grant prior approval for the development. Consequently, the development would not benefit from the provisions of Schedule 2, Part 3, Class O of GPDO, and the appeal development is one for which an application for planning permission is required. Accordingly, the appeal should be dismissed.
7. The Council's decision notice refers to two reasons that prior approval is refused. These are related to the uncertainty of the use of part of the building on 29 May 2013 (under O.1(b)(i) of Class O) and inadequate information in respect of highway matters (under O.2(a) of Class O). I have also noted supporting representations stating that the development is more preferable than building on green field land, and that the previous reasons for refusal are capable of judicial challenge. However, as I have found that the proposals are not permitted development given the rights conferred by Class O are withdrawn by an Article 4 Direction, it is not necessary to consider these matters further.

Conclusion

8. For the reasons set out above, the proposed development cannot be considered permitted development under the prior approval process. Therefore, the appeal should be dismissed.

Dan Szymanski

INSPECTOR