



Appeal Decision

Site visit made on 19 October 2020

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2020

Appeal Ref: APP/T2405/W/20/3255890

Overton House, 43 Enderby Road, Blaby LE8 4GD

- 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 O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Singh against the decision of Blaby District Council.
 - The application Ref 20/0620/CLASSO, dated 1 June 2020, was refused by notice dated 13 July 2020.
 - The development proposed is the change of use from offices (Class B1(a)) to eight self contained flats (8 x 1 bed) (Class C3); with associated parking, cycles and refuse store area.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The prior approval application was submitted under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This allows the change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling house) of the schedule of the Use Classes Order from a use falling within Class B1(a) (offices). On 1 September 2020 the Town and Country Planning (Use Classes) Order 1987 was amended and as part of this Class B1(a) became part of a new Commercial, Business and Service Use (Class E). However, as the appeal was made before this date, I must determine the appeal on the basis of the GPDO and the use classes that existed at the time the appeal was submitted.

Main Issue

3. The main issue in the appeal is whether or not the proposed development is permitted development and, if it is, whether or not prior approval should be granted.

Reasons

4. Class O of the GPDO permits, subject to certain restrictions, the change of use to a building falling within Class C3 (dwellinghouse) from a use falling within Class B1(a) (offices). Permission was granted in 1992¹ for the change of use of the building to an office for community nurses and it is not disputed by the

¹ Application Reference 92/0913/1/PY

- parties that this falls within Class B1(a) and that the building fell within this use on the 29 May 2013 as required by the GPDO.
5. However, condition 3 of the 1992 permission states that "Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or any subsequent re-enactment, this permission shall relate to the use of the premises as an office for a Community Nurse Base as described in your submitted planning application and for no other purpose."
 6. The condition therefore removes the right to change the use of the building to any other use including uses that otherwise would be permitted under the GPDO. As a result, the use of the building for any other purpose requires obtaining permission from the local planning authority.
 7. Article 3(4) of the GPDO states that nothing in the GPDO permits development that is contrary to any condition imposed by any planning permission. This therefore makes clear that if a condition is imposed on a planning permission it cannot be overridden by the use of permitted development rights. Furthermore, case law² has established that where a condition such as this restricts the future use of the building, consent for any other use cannot be obtained by the prior approval process.
 8. As a result, the permitted development rights set out in Schedule 2, Part 3, Class O of the GPDO do not apply.
 9. The appellant has highlighted that prior approval was granted in 2019³ for the conversion of the building to 2 dwellings and considers that this sets a precedent for the current application. The Council has stated that this application for prior approval was granted in error by an officer unaware of the condition on the former approval and its relevance to the case. Whilst I appreciate the appellant's frustration in this regard, I have determined the appeal on the basis of the evidence before me which includes details of the restrictive condition and the relevant case law. As a consequence of these the permitted development rights set out in Schedule 2, Part 3, Class O of the GPDO do not apply.
 10. For the reasons given above, I conclude that the proposal is not permitted development, so the need for prior approval does not arise, and the appeal should be dismissed.

Alison Partington

INSPECTOR

² Dunnett Investments Limited v SSCLG and East Dorset District Council [2016] EWHC 534 (Admin)

³ Application Reference 19/0352/CLASSO