



Appeal Decision

Site visit made on 1 February 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/C2741/W/20/3261689

Unit 4, 1 Hornsby Passage, Stonegate, York YO1 8AT

- 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 C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Yalcin Kizilkaya against the decision of City of York Council.
 - The application Ref 20/01400/RFPA3, dated 31 July 2020, was refused by notice dated 15 October 2020.
 - The development proposed is a Change of use from shop (use class A1) to cafe/restaurant (use class A3) under class C, part 3, schedule 2 of article 3 of The Town and Country Planning (general permitted development) order 2015.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development complies with the conditions, limitations or restrictions applicable to enable it to be permitted development.

Reasons

3. The appeal site is an empty unit which sits adjacent to a courtyard accessed via a passageway from Stonegate within the centre of York. The evidence and my on-site observations indicate that the site is in close proximity to large windows which serve residential property. The proposal includes the provision of a ventilation flue.
4. Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) amongst other uses grants permitted development rights for a change of use from retail to restaurant or café 'C.(a)' and for some building or other operations for the provision of facilities for ventilation and extraction and the storage of rubbish 'C.(b)'.
5. Where the development proposed is development under C.(a) together with development under C.(b), paragraph C.2 identifies various conditions. The developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to matters including, but not limited to noise and odour impacts of the development,

impacts of storage and handling of waste in relation to the development and impacts of the hours of opening of the development.

6. Sub paragraph W(3) of part 3 states that the local planning authority may refuse an application where, in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions applicable to the development in question.
7. Only very limited details have been supplied relating to the matters identified by the conditions which are important matters given the location of the appeal site. Whilst drawings are provided which show floor plans and the position of the extraction equipment, supporting information extends in the main only to short statements and what appear to be generic catalogue extracts relating to extraction equipment and insulation.
8. The developer has therefore provided insufficient information to establish compliance with the conditions under paragraph C.2. Subsequently, the development falls outside the permitted development right and there is no requirement to make a determination on the prior approval matters.

Other Matters

9. The appellant suggests that the appeal site already benefits from a lawful A3 use. However, there is no clear evidence submitted with the appeal that confirms this is the case and it is not my role within this appeal to conduct an exercise as to lawful use. It would be up to the appellant whether they pursued this matter through seeking a Certificate of Lawfulness of Existing Use under s191 of the TCPA 1990.
10. I also note that the appellant is unhappy with the Council in relation to their handling of the notification for prior approval. However, concerns in this regard should be directed through the Council's complaints procedure, should the appellant so wish.

Conclusion

11. The appeal should therefore be dismissed as the developer has failed to provide sufficient information to establish compliance with the conditions under paragraph C.2 of Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

T J Burnham

INSPECTOR