



Appeal Decision

Site visit made on 16 March 2021

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 04 June 2021

Appeal Ref: APP/W2465/W/20/3255954

17-19 Kingsley Street, Leicester LE2 6DY

- 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 M 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 Leicester City Council.
 - The application Ref 20200722, dated 6 May 2020, was refused by notice dated 3 July 2020.
 - The development proposed is described as "mixed-use Class A - Shop and Class - C3 Dwellinghouse: Conversion of the first floor, second floor and loft space into Class C3 - Apartments".
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class M, paragraph M(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for mixed-use Class A - Shop and Class - C3 Dwellinghouse: Conversion of the first floor, second floor and loft space into Class C3 - Apartments at 17-19 Kingsley Street, Leicester LE2 6DY in accordance with the application ref 20200722 made on 6 May 2020, and the details submitted with it including plan no A1-001b (except where this shows any works which would fall outside the change of use application), pursuant to Article 3(1) and Schedule 2, Part 3, paragraph W.

Preliminary Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 have come into force since the submission of the appeal. The Council and the appellant have been provided with an opportunity to comment on the implications of this legislation for the appeal and, regarding Paragraph 4 of the Regulations, I have also considered the case with reference to the previous use classes in force when the application was made.
3. The Council submits that the development is not permitted development. However, I cannot address any questions of lawfulness or about the prior approval matters due to the failure to refuse the application within the statutory period. Therefore I have not considered this submission further.
4. Drawing Number A1-001 was submitted with the application. The plan shows an altered first floor window arrangement, and minor amendments to the arrangement of rooms on the ground floor. Drawing Number A1-001b was submitted during the application process. This omits a first floor window on the

property's west elevation. Thus, it appears from both plans that building operations to external walls to facilitate the change of use may be envisaged.

5. Nevertheless, Paragraph W(2)(a)¹ states that an application "must be accompanied by...a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must [in the same application] include any building or other operations". The application form indicates that no building works are required, and no description of any planned building operations is provided in the application or the appeal. The application consequently does not comply with Paragraph W(2)(a) if building works are planned and therefore I have treated the application as seeking a change of use only.
6. Thus, I cannot address matters relating to building operations, because the works would fall outside of the application. Plan A1-001b indicates the site and shows the proposed development. The plan consequently complies with the requirements for applications for prior approval under Part 3. If the applicant were to later find that works are necessary, a new prior approval application for the change of use and operations would be required before the development is commenced.
7. Article 7 of the GPDO provides that where, in relation to an application for prior approval for development which is permitted by any Class in Schedule 2, the decision must be made by the Council within the period specified in the relevant provision of Schedule 2 or within such longer period as may be agreed by the applicant in writing.

Main Issue

8. In view of the above, the main issue is whether prior approval is deemed to be granted by reason of the timing of the Council's decision.

Reasons

9. Whilst the date on the application form is 6 May 2020, the decision notice records an application date of 8 April 2020. The end of the 56 day statutory period for determination of the application following these dates was 1 July and 3 June respectively.
10. The Council's decision date was 3 July 2020. No written agreement to an extension of the statutory period was obtained from the appellant. As a result, the Council's decision occurred later than the end of either statutory period identified above. Using either date, prior approval is consequently deemed to be granted on the expiry of the statutory period. The development may lawfully proceed if constructed or carried out in accordance with the submitted plans (apart from where building operations would be necessary, as set out above), and with the conditions and limitations imposed on the planning permission granted by the GPDO.

Conclusion

11. For the reasons given above, I conclude that the appeal should be allowed and prior approval is deemed to be granted.

Conditions

¹ Of Schedule 2, Part 3 of the GPDO

12. Development under Class M is permitted subject to the condition that:

(a) development under Class M(a), and under Class M(b), if any, must be completed within a period of 3 years starting with the prior approval date;

(b) a building which has changed use under Class M is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse.

C Beeby

INSPECTOR