



Appeal Decision

Site Visit made on 22 June 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/X2410/W/21/3268217

77 Burder Street, Loughborough, LE11 1JH

- 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 O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
 - The appeal is made by Mr Singh against the decision of Charnwood Borough Council.
 - The application Ref P/20/2204/2 is dated 16 November 2020.
 - The development proposed is described as: Notification of change of use from Office to Flats, with natural light in all habitable rooms of the dwellings.
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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 O, Paragraph O.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from Office to Flats, with natural light in all habitable rooms of the dwellings, at 77 Burder Street, Loughborough, LE11 1JH in accordance with the application Ref P/20/2204/2, dated 16 November 2020, and the details submitted with it, including plans Nos 77BS-01, 77BS-02.

Reasons

2. The appeal is made following the failure of the Council to issue a decision in respect of the application for prior approval made by the appellant.
3. Schedule 2, Part 3, Class O of the GPDO permits the 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 Order¹, to a use falling within Class C3 (dwellinghouses) of that Schedule. This is subject to the procedure for prior approval being followed as set out at Paragraph O.2.(1) and Paragraph W.
4. Paragraph W.(2) sets out the information required to be submitted with an application for prior approval. Paragraph W.(11)(c) states that the development must not begin before the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused. The appellant argues that the Council failed to notify him of its decision within this statutory period and that prior approval is deemed to be granted as a result.
5. The application was submitted on 16 November 2020, comprising two application forms and two drawings. The Council indicates a further application

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

- form, which included an email address for the appellant, and the same plans were submitted late in the day on 19 November, and recorded as received on 20 November. Further documents were received by the Council on 7 December, including a flood risk assessment (FRA) required under paragraph W.(2)(e).
6. Having regard to the judgment of the Court of Appeal in *Murrell*², concerning the adequacy or otherwise of the content of a prior approval application and the validity of a subsequent determination, I find that the requirements of Paragraph W.(2) were satisfied upon receipt of the FRA on 7 December 2020; other requirements having been met through the application form and plans submitted earlier. Therefore, the 56-day statutory period in which to determine the application commenced on this date and ended on 2 March 2021.
 7. The Council argues that the application was invalid as it did not consider the appeal site to be in use as offices on the relevant date under Paragraph O.1.(b), 29 May 2013, and it argues therefore that the permitted development right under Class O does not apply. However, as the documents submitted by the appellant satisfied the requirements of Paragraph W.(2), the statutory period to determine the application commenced on 7 December. Whilst the Council had misgivings, the GPDO does not provide that the Council may delay the commencement of the statutory determination period, or 'stop the clock' as expressed in *Murrell*, if the information provided at the outset has met the basic requirements of W.(2), which in this case it did.
 8. It was open to the Council to refuse the application within the 56-day period under the provisions of Paragraph W.(3) where in its opinion the proposed development did not comply with any conditions, limitations or restrictions specified in Part 3 as being applicable to the development in question. However, the statutory period expired without the Council issuing a decision in this case.
 9. Therefore, prior approval is deemed to be granted on the expiry of the statutory period on 2 March 2021. Consequently, it is not open to me to 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 further considered the parties' submissions in these respects.
 10. Whilst prior approval is deemed to be granted on the expiry of the statutory period this does not in itself automatically mean that the development meets the limitations and conditions of Class O and hence is permitted development. In this case, there has been no publicity carried out and furthermore there are doubts raised about the lawful use of the property. The appellant would need to apply for a lawful development certificate if they wanted legal certainty that the proposal was permitted development and hence that the development could be lawfully implemented.

K Savage

INSPECTOR

² *Murrell v SSCLG* [2010] EWCA Civ 1367