



Appeal Decision

Site visit made on 15 June 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/P4605/W/21/3267518

40 Oak Tree Lane, Selly Oak, Birmingham B29 6HX

- 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 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended.
 - The appeal is made by Mr Sandeep Krishan of Flare Homes Ltd against the decision of Birmingham City Council.
 - The application Ref 2020/09487/PA is dated 27 November 2020.
 - The development proposed is the erection of a 6 metre deep single storey rear extension, max height 3 metres, eaves height 3 metres.
-

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 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of a 6 metre deep single storey rear extension, max height 3 metres, eaves height 3 metres, at 40 Oak Tree Lane, Selly Oak, Birmingham B29 6HX, in accordance with the application Ref 2020/09487/PA made on 27 November 2020, and the details submitted with it pursuant to Article 3(1) and Schedule 2, Part 1, Class A.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form, as it provides more detail than that used on the original application form.
3. The Council has not issued a decision notice in respect of the application, and their failure to refuse the application within the statutory period means that I cannot address any questions of lawfulness or about the prior approval matters. The implications of this are set out in my reasons below.
4. I am also the Inspector appointed to determine another appeal at 40 Oak Tree Lane, reference APP/P4605/W/21/3272557. The two appeals are rather different in nature, and the other appeal is the subject of a separate decision.

Main Issue

5. The main issue is whether prior approval is deemed to be granted by reason of Council's failure to issue a decision notice.

Reasons

6. The appeal relates to a two-storey semi-detached property, used as a 7-bedroom House in Multiple Occupation ("HMO").
7. Paragraph A.1.(g) of Schedule 2, Part 1, Class A of the GPDO permits the enlargement of a detached dwellinghouse by the erection of a single storey extension that extends no more than 8m from the rear of the original dwellinghouse, subject to the process of prior approval set out at Paragraph A.4. being followed.
8. Paragraph A.4.(10)(c) provides that the development subject to the prior approval process shall not begin before the expiry of 42 days following the date on which the required prior approval information was received by the Council without it notifying the developer as to whether prior approval is given or refused.
9. The application was submitted to the Council on 27 November 2020. At that time the Council was of the view that, as a *sui generis* HMO, the appeal property did not benefit from the same permitted development rights as a dwellinghouse within the C3 Use Class, and that it was a development for which planning permission would be required. The Council wrote to the appellant to this effect on 3 December 2020, although no formal decision notice refusing the application was ever issued.
10. The Council subsequently determined other applications on the appeal site, including one for a Lawful Development Certificate and another for prior approval¹. In so doing, and having regard to caselaw established in *Gravesham*², it concluded that larger HMOs (including the appeal property) could after all be eligible for permitted development rights provided they meet the test to be defined as a dwellinghouse, which would depend on the facts in each case.
11. However, regardless of the shift in the Council's view, nothing further appears to have been done in respect of the application to which this appeal relates. The Council's letter to the appellant on 3 December 2020 did not "stop the clock" on the 42 day period provided for by Paragraph A.4.(10)(c) of the GPDO. That ended on 8 January 2021 without the Council having issued a formal decision notice.
12. I note that the Council's appeal statement indicates that it considers that the extension as proposed would not comply with the limitations and restrictions set out in Paragraph A.1.(j). However, as no notice of refusal has been issued, prior approval is deemed to be granted on the expiry of the statutory period on 8 January 2021. Consequently it is not open to me to consider the details submitted with the application and whether the development would otherwise be permitted development under the GPDO.
13. However, this does not mean that carrying out the development would be lawful. The development can only lawfully proceed if carried out in accordance with the conditions and limitations imposed on the planning permission granted by the GPDO. It is for the appellant to satisfy himself that the development conforms with all relevant conditions and limitations of the GPDO. If it does

¹ LPA refs: 2020/09500/PA and 2021/02067/PA respectively

² Wood v SSCLG and Gravesham BC [2015] EWCA Civ 195

not, the GPDO does not grant it planning permission and the development, if constructed, may be at risk of enforcement action by the Council.

Conclusion

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

M Cryan

Inspector