



Appeal Decision

Site Visit made on 11 October 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2021

Appeal Ref: APP/W2465/W/21/3277330

160 Fosse Road North, Leicester LE3 5ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application made under Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a determination as to whether prior approval is required.
 - The appeal is made by Mr M Ismail against Leicester City Council.
 - The application Ref 20210797, is dated 4 April 2021.
 - The development proposed is notification of change of use of part of ground floor and first floor retail use (Class E) to three self-contained flats (3 x 1 bed) (Class C3) all with windows providing adequate natural light (Class C3).
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Schedule 2, Part 3, Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of part of ground floor and first floor retail use (Class E) to three self-contained flats (3 x 1 bed) (Class C3) at 160 Fosse Road North, Leicester LE3 5ES in accordance with the terms of the application, Ref 20210797, dated 5 April 2021, subject to the various conditions laid out at Paragraph M.2 to Part 3 of the GPDO.

Preliminary Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and had the effect of amending and simplifying the system of Use Classes. A use formerly falling within Class A1 now falls within Class E, as reflected in the description of development given. I note that the Council's determination was applied for in advance of the relevant 31 July 2021 deadline set out under sub-paragraph (3)(c) of Paragraph M.2 to Part 3 of the GPDO.
3. At paragraph 1 of this Decision, I have not included reference to windows providing adequate natural light. This is because this constitutes a matter for potential consideration through the prior approval process, as opposed to an act of development.

Main Issue

4. The implications of the Council having failed to give notification as to whether prior approval was given or refused prior to the expiry of 56 days following the date on which the application was received.

Reasons

5. The statutory period for determination as to whether prior approval was required started once all the required information listed under sub-paragraph (2) of Paragraph W to Part 3 of the GPDO had been received. The Council do not dispute that this was the case on 5 April 2021 and have acknowledged that a decision was not made within 56 days of the application's receipt and that no time extension was agreed. In such circumstances the appeal should be allowed on the basis that prior approval is deemed to be granted by the GPDO.
6. Whilst the Council have indicated that this appeal should not succeed, its failure to refuse the application within the statutory period means that I cannot at this juncture address any questions of whether or not the proposal would be permitted development. As a further note, in the circumstances to hand, there does not now exist an opportunity to impose conditions over and above those set out in the GPDO.

Conclusion

7. For the above reasons, the appeal is allowed and prior approval is deemed to be granted.

Andrew Smith

INSPECTOR