



Appeal Decision

Site visit made on 6 September 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/C4235/W/22/3297875

347 Edgeley Road, Cheadle Heath, Stockport SK3 0RJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed notice period of a decision on a prior approval application required under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO').
 - The appeal is made by Mrs Aqsa Butt against Stockport Metropolitan Borough Council.
 - The application Ref DC/081272 is dated 22 May 2021.
 - The development proposed is described as 'Inside of the property will be altered to provide a kitchen and toilet for occupants, and shop front is currently a retail window which will be changed to a double window and a pvc door fitted to change the current glass door'.
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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 GPDO for the change of use from vacant retail (A1) to a single dwellinghouse (C3) at 347 Edgeley Road, Cheadle Heath, Stockport SK3 0RJ, in accordance with the terms of the application Ref DC/081272, dated 22 May 2021, and the plans submitted with it
2. The approval is subject to conditions that the development must be completed within a period of 3 years from the date of this decision and must be used as a dwellinghouse and for no other purposes, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse in accordance with conditions M.2(3) of the GPDO.

Procedural Matters

3. Although on the appeal form the appellant is given as Mr Zeeshan Butt, it has been confirmed that the appeal has been submitted on behalf of the original applicant Mrs Aqsa Butt. However, as written confirmation that the appeal can proceed in the appellant's name has not been received, I have used the original applicant's name in the banner heading above.
4. The Council has described the development as "Prior approval for change of use from vacant retail (A1) to a single dwellinghouse (Class C3)". This is a more accurate description of the proposed development and I have therefore used it for this decision.
5. Schedule 2, Part 3, Class M(a) of the GPDO permits development consisting of a change of use of a building from (i) a use falling within one of the following (aa) laundrette; (bb) betting office; (cc) pay day loan shop; (dd) hot food

- takeaway; or (ii) a mixed use combining use as a dwellinghouse with a use falling within one of the uses mentioned in paragraph (i) (aa), (bb) or (cc) to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order. Part 3 Class M(b) also permits the carrying out of building operations reasonably necessary to convert the building to a use falling within Class C3.
6. Paragraph M.1 of the GPDO sets out circumstances where the development is not permitted, and paragraph M.2 lists a number of conditions including that before beginning the development an application must be made to the local planning authority for a determination as to whether prior approval will be required relating to a number of matters.
 7. A number of changes were made to the Town and Country Planning (Use Classes) Order 1987 (the Use Class Order) and the GPDO in 2020 and 2021. In the Use Class Order, the various uses that were in Classes A, B and D have been replaced by a new Use Class E¹, which includes retail premises. As from 1 August 2021, a new Use Class MA was brought into effect in Schedule 2, Part 3 of the GPDO² to allow any use within the newly formed Use Class E to change to residential, subject to conditions and limitations.
 8. Prior to 1 August 2021, in addition to those uses listed above, Class M also permitted development consisting of the change of use of a building from a use falling within shops (Use Class A1) and financial and professional services (Use Class A2) to a dwellinghouse. It is apparent from the application form and other information before me that the appellant sought prior approval under Schedule 2, Part 3, Class M(b) for the change of use of the building from a shop/retail (Use Class A1) to a dwellinghouse (Use Class C3), along with building operations reasonably necessary to convert the building.
 9. Paragraph M.2 (3)(c) of the GPDO states that where the proposed development includes a change of use of a building falling within Class A1 or A2 of the Use Classes Order, the application must be made on or before 31 July 2021. The application was dated 22 May 2021 and made under Schedule 2, Part 3, Class M of the GPDO. The Council however did not consider the application to be valid until 23 January 2022 following the submission of additional plans. Irrespective of the date on which the application was valid, the Council acknowledges that it failed to make a determination on the application within the prescribed period.
 10. In any event, given their view that the application was not valid until January 2022, the Council considers that the proposed change of use is not permitted development due to the previous use of the building not falling within any of those listed under Schedule 2, Part 3, Class M(a) (i) or (ii). Additionally, the Council also considers that the proposal fails to provide adequate natural light in all habitable rooms and fails to comply with the nationally described space standards and therefore would not be permitted development in any case.
 11. However, the appeal before me relates to the Council's failure to make a determination on the prior approval application. Whether or not the proposal is permitted development is not a matter for me to consider when determining this appeal which solely relates to the prior approval process. The appellant can seek to ascertain the lawfulness of any such proposed development by applying

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

² Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021

to the Council for a certificate of lawfulness under sections 191 or 192 of the Town and Country Planning Act 1990 (as amended).

Main Issue

12. Having regard to the relevant requirements of Class M and paragraph W of the GPDO, the main issue is whether prior approval is deemed to be granted.

Reasons

13. Paragraph W.(11) of the GPDO states that development must not begin before the occurrence of one of the listed events. This includes the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the application as to whether prior approval is given or refused.
14. As stated above, the Council acknowledges that it failed to notify the appellant as to whether prior approval was given or refused within 56 days of it receiving the application. Such a failure to notify the appellant means it is now unable to require prior approval for the matters listed in paragraph M.2 (a) to (f).
15. Consequently, having regard to paragraph W.(11) of the GPDO the Council's failure to determine the application means that prior approval is deemed to have been granted. However, notwithstanding the deemed approval, the proposed development can only proceed if it is in fact permitted development having regard to the relevant conditions and limitations imposed under Class M.1 and M.2 of Part 3 of Schedule 2 of the GPDO.

Conclusion

16. For the reasons given above and having regard to all matters raised, I conclude that the failure of the Council to make a determination on the application within the prescribed period means that prior approval is deemed to be granted.

David Jones

INSPECTOR