



Appeal Decision

Site visit made on 30 September 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/J0350/W/22/3299960

The Switch, 1-7 The Grove, Slough SL1 1QP

- 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 (as amended) (GPDO).
 - The appeal is made by Shaviram Slough Limited against the decision of Slough Borough Council.
 - The application Ref F/01043/043, dated 23 July 2021, was refused by notice dated 6 December 2021.
 - The development proposed is described as 'Change of use of the building at ground to 3rd floors from Class B1a offices to 71no. flats (65 x one bedroom and 6 x two bedroom)'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the building at ground to 3rd floors from Class B1a offices to 71no. flats (65 x one bedroom and 6 x two bedroom) at The Switch, 1-7 The Grove, Slough SL1 1QP in accordance with the terms of the application, Ref F/01043/043, dated 23 July 2021, and the plans submitted with it.

Reasons

2. Class O of the GPDO permits development of a 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 Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. This is subject to a number of situations where such development is not permitted, listed under paragraph O.1 and the conditions in paragraph O.2(1). It is common ground between the parties that the proposed development would meet the requirements of paragraph O.1 and that as such it would represent permitted development under Class O. There is no reason for me to take a contrary view.
4. Development under Class O of the GPDO is permitted subject to the condition that before beginning the development the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority is required. A prior approval application was received by the Council on 23 July 2021 and it was registered on the same day.
5. The GDPO establishes that where an application is made to the LPA in relation to whether prior approval is required for development under Part 3, the decision must be made by the local planning authority (LPA) within 56 days or

within such longer period as may be agreed by the applicant in writing. Paragraph W of the Order further sets out the procedure for prior approval under Part 3, Paragraph W.(11)(c) says that 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 LPA without the authority notifying as to whether prior approval is given or refused.

6. In this instance, extensions of time beyond the original 56-day deadline were agreed by the applicant in writing. These were agreed to enable the Council to seek independent advice from a BRE specialist to review the Internal Daylight and Sunlight Report that accompanied the application.
7. The appellant has provided an email trail to demonstrate that an initial extension of time was agreed until 15 October 2021 and then a further extension was agreed until 3 December 2021. Based on the information provided and having regard to the wording of the GPDO, the Council was therefore required to determine the prior approval application by the 3 December 2021.
8. The Council's decision notice specifies that the date of the decision was 6 December 2021. Additionally, the front page of the officer's delegated report also confirms that an extension of time had been agreed until 3 December 2021, whilst also indicating that the decision was made on 6 December 2021.
9. Consequently, in the absence of the LPA's written notice by 3 December 2021, prior approval is deemed to have been granted.

Other Matters

10. During the appeal, the Council has raised that the development may have a potential impact on the Burnham Beeches Special Area of Conservation (the "European Site").
11. Article 3(1) of the GPDO indicates that any permission is also subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 ("CHSR"). In effect, Regulation 75 imposes a condition on any permission granted by the GPDO that is likely to have a significant effect on a European Site that development must not commence until a developer has received written notification of the approval of the LPA under Regulation 77. Regulation 77 requires that the LPA may approve the development only after having ascertained that it will not affect the integrity of the European Site.
12. In accordance with Article 3(1) of the GPDO, Regulations 75 to 77 of the CHSR do not prevent me finding that the proposal is permitted development under the GPDO and granting prior approval under the conditions set out at Schedule 2, Part 3, Class O. However, that is not to say the development can take place as that will be dependent on the outcome of the separately required Regulation 77 application under the CHSR.

Conditions

13. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO is subject to the condition that it must be completed within a period of 3 years of the prior approval date.

Conclusion

14. The scheme is permitted development under Schedule 2, Part 3, Class O of the GPDO, as the LPA did not serve notice on the applicant as to whether prior approval was given or refused within the required timeframe. Planning permission is therefore deemed to have been granted on the expiry of the agreed period on 3 December 2021. For the reasons identified, the appeal is allowed and prior approval is deemed to be granted.

Lewis Condé

INSPECTOR