



Appeal Decision

Site visit made on 30 November 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/Y2736/W/22/3297888

Welburn Business Park, Greets House Road, Welburn, Malton YO60 7EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Welburn Park Venture against the decision of Ryedale District Council.
 - The application Ref 21/01117/GPCOU, dated 28 July 2021, was refused by notice dated 9 November 2021.
 - The development proposed is: change of use of buildings from offices to 10no. dwellings comprising 4no. two bedroom dwellings and 6no. one bedroom dwellings with associated parking and amenity space.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of buildings from offices to 10no. dwellings comprising 4no. two bedroom dwellings and 6no. one bedroom dwellings with associated parking and amenity space at Welburn Business Park, Greets House Road, Malton YO60 7EP in accordance with the terms of the application, Ref 21/01117/GPCOU, dated 28 July 2021, and the plans submitted with it.

Applications for costs

2. An application for costs has been received from Welburn Park Venture against Ryedale District Council. This is the subject of a separate decision.

Preliminary Matters

3. I have taken the address from the appellant's supporting letter in the interests of clarity. I have also taken the description from this document as there is no description included on the application form. In doing so I have removed words that are not acts of development.

Procedural Matters

4. Class O of Part 3 of the General (Permitted Development) Order 2015 (GPDO) contains a permitted development right for changes of use from offices to dwellinghouses subject to certain criteria and conditions. One of these requires application to be made for prior approval as to the transport and highways impacts of the development. As the application was made before 31 July 2021,

the appeal should be considered under Class O even though this has now been superseded by Class MA.

5. In its delegated report, the Council concluded that the proposed development would meet the criteria to qualify under Class O, subject to prior approval. In assessing prior approval, the Council considered that, subject to conditions related to contamination and parking, it had not been adequately demonstrated that there would be no noise impacts from commercial premises on the intended occupiers of the development. It notes that no noise assessment has been submitted. The Council refused prior approval on this basis.
6. However, the GPDO¹ sets out that development must not begin until either: the applicant has received written notice from the Council that (a) prior approval is not required; or (b) that it has been granted prior approval; or (c) the expiry of 56 days following the date on which the application was received by the Council without it notifying the applicant as to whether prior approval is given or refused.

Main Issues

7. The main parties agree that 56 days had expired before the Council issued its decision. Therefore, the main issues are:
 - whether planning permission is deemed to have been granted by reason of the timing of the Council's decision; and
 - if planning permission is not deemed to have been granted, whether the development would provide adequate living conditions for future occupiers, having regard to potential for noise from commercial premises.

Reasons

8. The application was received by the Council on 29 July 2021. The Council states that it erroneously recorded the date received as 14 September. It later contacted the appellant by letter confirming the date of receipt and the 56 day expiry date of 9 November, calculated from 14 September.
9. The Council's decision notice specifies the date of 9 November 2021. This is after the expiry of 56 days from 29 July 2021, the date of receipt of the application. Consequently, in the absence of the Council's written notice within the 56 day period, prior approval is deemed to have been granted.
10. Moreover, the failure to give written notice within the statutory period means that I cannot address any prior approval matters, including the effect on future occupiers from noise.

Conditions

11. Under Class O, development is permitted subject to a condition that it must be completed within 3 years starting from the date of this decision. The development must also be carried out in accordance with the approved details. Paragraph W.(13) also provides for additional conditions to be attached that are reasonably related to the subject matter of the prior approval. However, as I have found that prior approval is deemed to have been granted, there is no means to attach such conditions.

¹ Schedule 2, Part 3, Paragraph W.(11).

Conclusion

12. For the above reasons 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.

Paul Martinson

INSPECTOR