



Appeal Decision

Site visit made on 15 December 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Appeal Ref: APP/W2465/W/22/3290837

88 Tudor Road, Leicester LE3 5HT

- 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 for planning permission.
 - The appeal is made by Mr R Patel against Leicester City Council.
 - The application Ref PL/20212412, is dated 16 September 2021.
 - The development proposed is described as the change of use and conversion of building from mixed use warehouse (Use Class B8) and residential (Use Class C3) to student accommodation in the form of seven (7x) studios (Sui Generis); and proposed external alterations.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr R Patel against Leicester City Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - Whether the development provides satisfactory living conditions for occupiers; and
 - Flood risk.

Reasons

4. By way of background at the time of submission of the planning application, subject of this appeal, there was a valid Enforcement Notice at the appeal site. The Council contends that determination of the planning application would have conflicted with the requirements of the notice, and it would have ceased to have effect.
5. The Council accepts that it did not determine the planning application but contends that it was not able to lawfully do so by reason of Section 180 of the Town and Country Planning Act (1990) (the Act).
6. Following the expiry of the prescribed period, the applicant (now the appellant), exercised their right to appeal to the Secretary of State against the Council's failure to determine the planning application. In these circumstances the Secretary of State, most usually through an appointed Inspector acting on

his behalf, assumes the role of the local planning authority as the responsible body for determining the planning application.

7. Section 78 of the Act covers the right to appeal against planning decisions and failure to take such decisions. It states that a person that has made a planning application may appeal to the Secretary of State if the local planning authority have not given notice to the applicant of their decision within the prescribed period, or within an extended period agreed between the applicant and the authority. It goes on to state that any appeal shall be made by notice served within such time and in such manner as may be prescribed by a development order.
8. Part 4(a) of Section 78 states that the time prescribed for the service of such a notice must not be less than 28 days from the end of the period prescribed.
9. The Council advise that the statutory determination date for the application was 21 December 2021. The applicant (now appellant) submitted the appeal on 17 January 2022. As the Council directs this is 27 days from the end of the prescribed period ie the statutory determination date rather than 28 days as set out in the Act. Therefore, on the basis of the evidence before me, the procedural requirements have not been met. As a result, the planning appeal was not correctly made.
10. Before the planning merits of the case can be considered it is necessary to establish whether the planning appeal was correctly made and thus capable of being lawfully determined.
11. In these circumstances neither the Secretary of State, nor an Inspector appointed by the Secretary of State, can lawfully determine the planning application as it is prevented from doing so by the requirements set out in Part 4 of Section 78 of the Act.
12. This being the case, the only conclusion that I can logically reach is that the appeal should fail. It is, therefore, not necessary for me to consider the planning merits of the case.

Conclusion

13. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR