



Appeal Decision

Site visit made on 23 May 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/W4705/X/22/3309947

Mount Street Mills, Mount Street, Bradford BD3 9RJ

- 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 approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(the GPDO).
 - The appeal is made by Mr Anjam, QS Food Services LTD, against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 22/02079/PN3MA, is dated 7 June 2022.
 - The development proposed is "Proposed 15 residential units. These are to include a mixture of 1 bed and 2 bed apartments. All of these apartments are to be on first floor of the building."
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for "Proposed 15 residential units. These are to include a mixture of 1 bed and 2 bed apartments. All of these apartments are to be on first floor of the building" at Mount Street Mills, Mount Street, Bradford BD3 9RJ in accordance with the application Ref 22/02079/PN3MA made on 7 June 2022, and the details submitted with it, including plan nos. 22-012-P-01; 21-012-P-21 and 21-012-P-20, pursuant to Article 3(1) and Schedule 2, Part 3, Class MA, paragraph W.(2). The development can lawfully proceed if carried out on this basis and in accordance with the conditions and limitations imposed on the planning permission granted by the GPDO.

Preliminary Matters

2. The appellant's appeal form refers to a certificate of lawfulness for proposed development. However, in practice, the appeal is lodged against the Council's failure to give notice, within the prescribed period, in respect of a prior approval decision required for the proposed development, rather than its failure to grant a certificate of lawfulness. For the avoidance of doubt I have determined the appeal on this basis.
3. The date of the application is cited above as 7 June 2022, agreed by the parties to be the date when the application was validated. The description of development follows that given on the appeal form, which I consider accurately describes the proposal.

4. During the course of the appeal I invited comments from the parties with regard to relevant case law.¹ I am therefore satisfied that I am able to refer to this case in my decision without causing any injustice.
5. The provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), within Schedule 2, Part 3, Class MA allow for "*Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order*" as permitted development. This provision is subject to various limitations and conditions.
6. There is no dispute that the first-floor area of the building, to which the application relates, was previously in a Class E related use for the requisite period of time, nor that the development would meet the various other limitations cited in paragraph MA.1. of the GPDO. The Council does not therefore dispute that the proposal is 'permitted development', subject to the prior approval procedure.
7. Notwithstanding this, I am mindful that the GPDO does not grant planning permission for new dwellings that do not to comply with the nationally described space standard, issued by DCLG on 27 March 2015 (in accordance with Article 3(9A)). From the information before me I cannot be certain that the proposed development would be fully compliant with the aforementioned space standard. However, because I have found that the Council failed to refuse the application within the statutory period, this means I cannot address whether the proposed development is actually 'permitted development' in any event.
8. Furthermore, and for the avoidance of doubt, this decision does not overcome any works or obligations that may be required under the building regulations.

Background

9. I have set out in the preceding paragraphs above that my decision is not specifically determining whether the proposed development is 'permitted development'.
10. Paragraph MA.2. of the GPDO states that before beginning development under Class MA the developer must apply to the local planning authority for a determination as to whether its prior approval is required in relation to certain matters. Such matters include the impacts of noise from commercial premises on the intended occupiers of the development; impacts on intended occupiers of introducing a residential use in an area considered important for general industrial or waste management uses; and the provision of adequate natural light in all habitable rooms of the dwellinghouses.
11. Paragraph W sets out the procedure for applications for prior approval under Part 3 of the GPDO. It requires that the development must not begin before the Council confirms in writing that its prior approval is not required; or it gives written notice of its prior approval; or the expiry of 56 days following receipt of the application, without the authority notifying the applicant as to whether prior approval is given or refused. Notwithstanding this, Article 7(c) of the

¹ *Gluck v SSHCLG & Crawley BC* [2020] EWCA Civ 1756

GPDO allows the determination period to be extended as may be agreed by the applicant and the authority in writing.

Main Issues

12. The main issues are i) whether a determination was made by the Council within the 56-day statutory period or within any extended period agreed by the applicant and the authority in writing and, if so; ii) whether prior approval should be given having regard to the conditions set out in section MA.2. of the GPDO.

Reasons

13. The appellant's case is confined to the point that the Council failed to issue its decision, as to whether prior approval is given or refused, within the requisite timescale as referred to above. The date of the original 56-day deadline appears to be disputed between the parties, the appellant understanding it to have been 2 August 2022, whilst the Council claims 30 July 2022². However, I note from the officer report and its decision notice that the Council agrees the application was made and accepted as valid on 7 June 2022. This would mean that the original 56-day statutory determination date was 2 August 2022.
14. The appellant acknowledges that an email was sent to the Council, dated 29 July 2022, suggesting that the decision period be extended by some 4 weeks to 26 August 2022, with a view to addressing concerns that had been raised by certain consultees. Notwithstanding this, its position is that any suggested extension to the decision time period was never agreed in writing by the Council. As such, they say, that by default they are now free to begin the development.
15. The Council cites the appellant's aforementioned email as constituting the requisite written agreement regarding the extension of time. It refers to the formal refusal of prior approval being made on 9 August 2022, therefore within the agreed extended period. It also refers to an email sent to the appellant, dated 5 August 2022, raising concerns about potential noise impacts arising from industrial activities in the surrounding area and the need for this matter to be addressed in a noise report; and makes reference in the officer report to concerns about industrial related noise and odour, and the impact of the layout on natural light to some of the proposed residential units.
16. I have had regard to the aforementioned case law. In that judgment it was found that a written email from the appellant proposing an extension to the statutory decision period was sufficient to evidence that an agreement had been made verbally between the parties as to the extension of time. In that case there was no dispute between the parties that they had verbally agreed to an extension of time, prior to the written proposal.
17. It seems to me that the circumstances of the present appeal are similar in as much as the appellant recognised there were outstanding matters that it wished to have the opportunity to address. Hence they were proactive in seeking an extension to the statutory decision period. The Council, by email dated 29 July 2022, replied to the appellant's email of the same date, saying that it would prioritise the application in the following week and would revert to the appellant thereafter.

² See Council's statement and email dated 9 June 2023

18. The Council did not provide its own formal written confirmation that it was satisfied to extend the statutory decision making period. In the context of the aforementioned case law, this was not crucial, and I acknowledge that it did not express any opposition to the extension of time.
19. However, in my judgement, a key difference between these cases is that in the appeal before me there is a lack of evidence of any agreement whatsoever, verbal or written, whereas at least in the cited case the agreement had been formed verbally; that agreement subsequently having been evidenced in writing.
20. The Council, within its statement, says that at no time up to the decision date, beyond the statutory determination date did the appellant raise the issue of the extension of time "not having been agreed". However, the appellant was not required to do so, the onus having been with the Council to make a positive expression of agreement. Also, the fact that the appellant did not indicate, until 15 August 2022, that they disputed the extension of time had been agreed does not get round this point.
21. The Council also suggests that the extension of time was accepted because the application was not determined prior to the statutory determination date, and the appellant was advised assessment of the application would be prioritised in the following week; and was subsequently advised, within ongoing dialogue, of the outcome of this assessment, and why prior approval would not be granted. However, I do not accept this interpretation. Whilst it may have prioritised assessment in the following week, this could potentially still have meant the Council reaching a decision within the original statutory time period, that is by 2 August 2022. Furthermore, the Council's ongoing dialogue point would not have been arguable at all had the developer been in a position to commence, and actually commenced, development on 3 August 2022.
22. In the absence of a positive expression of agreement from the Council to extend the statutory determination period, it simply cannot have been clear that such agreement existed. I am left with the impression that the Council in this case has, for whatever reason, taken a somewhat passive approach to the statutory decision making period, such that there has not been any substantive engagement with the appellant until after the deadline. I find that, on the balance of probability, the requisite agreement between the parties to extend the decision making period was not formed.

Conclusion

23. For the above reasons and having had regard to all other matters raised, as a matter of fact and degree, I conclude that the Council's decision was not served within the statutory period of 56 days, or within any extended period agreed by the applicant and the authority in writing. The appeal is therefore allowed and prior approval is deemed to be granted.
24. Given that prior approval is deemed to be granted, I am unable to address the conditions and limitations set out in section MA.2. of the GPDO, including the impacts of surrounding land uses and the design of the development on the intended occupiers of the development.
25. For the avoidance of doubt, and subject to the proviso that the development constitutes permitted development, the GPDO requires that the development is

carried out in accordance with the details provided in the application, including the submitted plans, unless the authority and appellant agree otherwise in writing, and must be completed within a period of 3 years starting with the prior approval date.

R Merrett

INSPECTOR