



Appeal Decision

Site visit made on 23 January 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2024

Appeal Ref: APP/Y0435/W/23/3328626

151 Technology House, Silbury Boulevard, Central Milton Keynes, Milton Keynes MK9 1LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Technology House MK Ltd against the decision of Milton Keynes Council.
 - The application Ref 23/00961/FULM, dated 20 April 2023, was refused by notice dated 16 June 2023.
 - The application sought prior notification for the change of use of existing office floorspace (Use Class B1(a)) to provide 25 residential apartments (Use Class C3) without complying with conditions attached to application ref: 21/01388/PANB1C dated 28 June 2021.
 - The condition in dispute is No 1 which states:
The development hereby permitted shall be completed before the expiration of three years from the date of this permission.
 - The reason given for the condition is:
In accordance with the conditions of Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) allowed for prior approval for a change of use from offices to residential under Class O of Part 3 of Schedule 2 of the GPDO.
3. The appellant has confirmed that since the appeal was made, works to implement the change of use have commenced on site. At the time of my visit, I observed works were taking place.
4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Background Information and Main Issue

5. The Council has granted prior approval for the change of use of existing office floorspace (Use Class B1(a)) to provide 25 residential apartments (Use Class C3). Condition No 1 requires the development to be completed before the expiration of three years from the date of the approval. The appellant wishes to extend the time limit for completion of the works outlined under Condition No 1. The request is for an extension of a further 12 months to enable the completion of the development.
6. My attention has been drawn to a Court Judgement¹ which clarified that an application may be made under S73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted by a development order. The condition relates to completion of the development within a set period, rather than when it should be started. I am satisfied that the application and the subsequent appeal before me is not precluded by S73(5) of the Act.
7. Taking this background into account, the main issue is whether the condition is necessary and reasonable in regard to completing the development by 28 June 2024.

Reasons

8. New homes delivered through permitted development (PD) rights make an important contribution to delivering housing by making effective use of existing buildings, allowing them to change into homes without the need to go through a full planning application. The lighter touch prior approval process was intended to incentivise and speed up housing delivery. Class O of the GPDO was subject to the standard limitation that the new dwellings must be completed within 3 years after the grant of prior approval. The 2016 amendment (SI 2016:332) to Class O of Schedule 2, Part 3 of the GPDO introduced the completion condition and the rationale within the explanatory memorandum was to support the delivery of new homes and the best use of brownfield land.
9. The appellant asserts that there is no site-specific or application-specific evidence as to how and why a completion date of 28 June 2024 is necessary to make the development acceptable in planning terms as required by the Framework. However, this is a standard condition attached to prior approvals under Class O of the GPDO. It is not possible to provide reasons on individual cases, albeit the timescale may be amended if a developer demonstrates it to be reasonable taking account of the particular circumstances of the case.
10. The appellant cites the current economic market, Brexit, Covid and the war in Ukraine as cumulatively impacting on delivery and commencement of works on site. They go on to state that they have faced considerable delays due to the uncertainty surrounding the build out, staffing and changes to Building Regulations being fundamental to delay and uncertainty for the project prior to it being able to commence. However, the reasons for the delay cited by the appellant are generic rather than site specific, with limited evidence to substantiate how these delays have affected the development.

¹ Pressland vs London Borough of Hammersmith and Fulham [2016] EWHC 1763 (Admin)

11. Furthermore, I have been provided with limited information regarding why a further 12-month period is reasonable to complete the works, such as details of what works are necessary and when they may be completed.
12. Based on the evidence before me I conclude that the condition is necessary but am not satisfied that an extension of time for completion is reasonable as this would undermine the process for the timely delivery of new homes and the Framework's objective of significantly boosting the supply of homes.

Other Matters

13. I note the introduction of Class MA, under Schedule 2 of the GPDO, in place of Class O. The Council have introduced an Article 4 Direction since granting prior approval for this development, revoking PD rights for a change of use from an office falling within Class E(g)(i) to a use falling within Class C3 (dwellinghouses) of Part C, Schedule 1 of the GPDO which covers the appeal site. Nevertheless, I consider that neither of these factors have any material relevance to the main issue of this appeal.
14. Reference has been made to decisions in other local authorities where they have accepted S73 applications to amend conditions relating to prior approval. Based on the limited information before me I do not have the sufficient details of the cases to be able to make any meaningful comparisons to the appeal before me. In any event, I have determined the appeal on its own merits.

Conclusion

15. For the reasons outlined above the appeal is dismissed.

R. Gee

INSPECTOR