



Appeal Decision

Site visit made on 12 March 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/J3015/W/23/3327877

2-4 Regent Street, Kimberley, Nottinghamshire NG16 2LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant 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 appeal is made by Emmanuel Agalamanyi against the decision of Broxtowe Borough Council.
- The application Ref is 23/00425/PMAP32.
- The development proposed is to convert the building into 14 one-bedroom apartments that meet the minimum space standards. Other work includes the removal of a steel lean to structure to the side of the property, the installation of new windows and doors along with the existing render to the outside being renewed.

Decision

1. The appeal is allowed, and prior approval is granted under the provisions of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) for the change of use from commercial, business and service to dwellinghouses (14 one-bedroom apartments) in accordance with the terms of the application Ref: 23/00425/PMAP32.

Preliminary Matters

2. The description of development in the banner heading above is taken from the submitted application form. However, it lacks clarity and certainty. The Council described the application, in their decision notice, as "Prior Notification for change of use from commercial, business and service to dwellinghouses (14 one-bedroom apartments)". The appellant has used the Council's description of development in their Statement of Case and, as I consider it better reflects what is before me, I have assessed the proposal on this basis, albeit I have referred to prior approval, as opposed to prior notification, in my decision.

Background and Main Issues

3. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) permits development 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 a use falling within Class C3 (dwellinghouses) of Schedule 1.
4. This is subject to a number of situations where such development is not permitted, listed under paragraph MA.1. It is common ground between the parties that the proposed development would meet the requirements of paragraph MA.1 and that, as such, it would represent permitted development.

5. Development under Class MA of the Order 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. Paragraph W.(2) details the information that should accompany the application.
6. Paragraph MA.2 of the Order lists conditions under which the developer must apply to the local planning authority as to whether prior approval would be required. One of these is (a) transport impacts of the development, particularly to ensure safe site access. The Council has identified highways impacts in their reason for refusal.
7. Paragraph W of the Order sets out the procedure for prior approval under Part 3, Paragraph W.(11)(c) states 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 local planning authority, without the authority notifying as to whether prior approval is given or refused. The appellant claims that the 56 days had expired before the refusal was issued.
8. In light of the matters identified above, the main issues are:
 - Whether planning permission is deemed to have been granted by reason of the timing of the Council's decision.
 - If planning permission has not deemed to have been granted, whether the transport impacts of the development is such as to require refusal of prior approval under paragraphs MA.2(a) and W.(3) of the Order.

Reasons

Timing of the Council's Decision

9. The Council received the Prior Approval application on 1 June 2023. Part 3 W(2) of the Order identifies that applications for prior approval must be accompanied by amongst other things (b) a plan indicating the site and showing the proposed development. Whilst plans were submitted, the letter from the Council, dated 2 June 2023, requested an OS plan showing the location of the site and an amendment to the labelling of one of the floor plans. Given the provisions of Part W, I am satisfied that the requested additional and amended plans were reasonable as a means of enabling the Council to determine the application.
10. Consequently, the application was made valid on 5 June 2023. Paragraph W.(11)(c) is clear that the 56 days for the determination date starts 'following the date on which the application was received by the Local Planning Authority'. If taken from the date the Council made the application valid, the 56 days expired on 31 July 2023.
11. The decision notice is dated 31 July 2023. However, from the evidence before me the decision was not sent to the appellant, or their agent, until the 1 August 2023. Paragraph W.(11) is clear that the written notice of the Council's determination is to be received by the appellant within the 56-day period. Although the Council made the decision on the 31 July the appellant did not receive the written notice until the 1 August.

12. The Council, therefore, failed to provide the appellant with written notice within the 56-day period. The decision was not issued to any party by the Council on the 31 July and administrative processes should be factored into the 56 days to ensure that the written notice is received by the appellant in time. Given that both the agent and appellant's email addresses are provided on the application form, and in accordance with Provision 2, Interpretation (6) to (10) of the Order, there is no reason for any delay in issuing the decision.
13. In the absence of written notice under paragraph W.(11) of the Order being received by the appellant, or their agent, by 31 July 2023, planning permission is deemed to have been granted, by reason of the timing of the Council's notification of their decision.

Transport and Highways

14. I understand the concerns of the Council and the third parties regarding the lack of on-site parking for the development and the pressure for on-street parking. However, given my findings above I am not able to consider this matter in further detail.

Other Matters

15. The appeal site is located within the Kimberley Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The CA encompasses the town centre and surrounding streets. While the CA has attractive and well-maintained shops and other historically significant buildings the appeal site currently makes a neutral contribution to the CA. Nevertheless, bearing in mind the extent of the works proposed under the prior approval, the character and appearance of the CA, as a whole, would be preserved. The lack of harm weighs neutrally and does not alter my overall conclusions on the main issues.

Conditions

16. The Order attaches standard conditions to this type of development, including that development must be completed within a period of 3 years, starting from the prior approval date and that the development must be carried out in accordance with the details provided in the application.
17. I also note the requests for conditions and informatives from consultees. Given the constraints of what I am able to consider under the Order and the lack of evidence of need for these conditions, I have no reason to impose any additional conditions. I recommend that the Council forward the information to the appellant.

Conclusion

18. The scheme is permitted development under Schedule 2, Part 3, Class MA of the Order. As notice was not received by the appellant within the 56 days required under paragraph W(11) planning permission is deemed to have been granted on the expiry of that 56 days, on 31 July 2023. For the reasons identified, I conclude that the appeal should succeed.

K Townend

INSPECTOR