



Appeal Decision

Site visit made on 30 July 2018

by **K Ford MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 August 2018

Appeal Ref: **APP/V2825/W/18/3195459** **59 Clarke Road, Northampton NN1 4PL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2 Part 3 Class O of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr M Khan against the decision of Northampton Borough Council.
 - The application Ref N/2017/1418, dated 27 October 2017, was refused by notice dated 23 January 2018.
 - The development proposed is change of use from office (Class B1a) to 9 dwellings (Class C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) for the change of use from office (Class B1a) to 9 dwellings (Class C3) in accordance with the terms of the application Ref: N/2017/1418, dated 27 October 2017, subject to the following conditions:
 - (1.) The development hereby permitted shall be carried out in accordance with the following approved plans: 000 E2, 010 E2, 011 E2, 012 E1, 030 E1, 101 P1, 110 P2, 111 P2, 112 P2, 210 P1, 211 P2, 300 P1, 311 P1 and 312 P2.

Procedural Matters

2. Schedule 2, Part 3, Class O of the General Permitted Development Order (GPDO) permits development of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellings) of that Schedule.
3. This is subject to a number of situations where such development is not permitted, listed under paragraph O.1 and the conditions in paragraph O.2(1). It is common ground between the parties that the proposed development would meet the requirements of paragraph O.1 and that as such it would represent permitted development under Class O.
4. Development under Class O of the GPDO 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.

5. Paragraph O.2 of the GPDO lists conditions under which the developer must apply to the local planning authority as to whether prior approval will be required. One of these is (a) the transport and highways impacts of the development. The Council has identified highways impacts in their reason for refusal.
6. Paragraph W of the Order sets out the procedure for prior approval under Part 3, Paragraph W.(11)(c) says that development must not begin before the expiry of 56 days following the date on which the application under subparagraph (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 notification or refusal was issued.

Main Issue

7. 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 and highways impacts of the development is such as to require refusal of prior approval under paragraphs O.2(a) and W.(3) of the GPDO.

Reasons

Timing of the Council's Decision

8. The Council received the Prior Approval application on 27 October 2017 and it was made valid on 29 November 2017. Based on the date the Council received the application, the 56 days expired on 22 December 2017. If taken from the date the Council made the application valid, the 56 days expired on 24 January 2018. The decision notice is dated 23 January 2018.
9. Part 3 W(2) of the GPDO 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 the appellant has said that the additional information requested by the Council on this matter exceeded the provisions of the GPDO, I am satisfied that the requested floor plans were reasonable as a means of enabling the Council to determine the application.
10. However, Part 3, N(9) is clear that the 56 days for the determination date start on the day 'following the date on which the application was received by the Local Planning Authority'. There is no requirement or provision in the GPDO for applications to be validated. Even if the Council had insufficient information initially to enable them to determine the application, there is provision under Part 3 W(3)(b) for them to refuse an application due to insufficient information. They did not do this.
11. Based on the information provided and having regard to the wording in the GPDO, the 56 days should be considered as running from the day following receipt of the application by the Council on 27 October 2017. In the absence of

written notice under paragraph W.(11) by 22 December, planning permission is deemed to have been granted.

Transport and Highways

12. Given my findings above it is not necessary for me to consider this matter in further detail.

Conditions

13. The GPDO 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. A condition relating to the commencement of development is therefore not necessary. The GPDO also requires that the development must be carried out in accordance with the details provided in the application. For the avoidance of doubt and for clarity I consider that a condition listing the plans is necessary. Paragraph W(13) of Schedule 2, Part 3 of the GPDO enables additional conditions to be attached that are reasonably related to the subject matter of the prior approval. The Council has identified an additional condition but as planning permission is deemed to have been granted, there is no means to attach additional conditions beyond the standard ones.

Conclusion

14. The scheme is permitted development under Schedule 2, Part 3, Class O of the GPDO. As notice was not served 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 22 December 2017. For the reasons identified, I conclude that the appeal should succeed.

K Ford

INSPECTOR