The Planning Inspectorate

Appeal Decision

Site visit made on 12 October 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th November 2021.

Appeal Ref: APP/M3455/W/21/3277130
1 Bemersley Road, Ball Green, Stoke-on-Trent ST6 8JF

- 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 Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO').
- The appeal is made by Mr Raj Bhatt against Stoke-on-Trent Council.
- The application, Ref 6653, is dated 1 April 2021.
- The development proposed is notification for prior approval for the 'Change of use from shop (Class A1) to dwellinghouse (Class C3)'.

Decision

1. The appeal is allowed and prior approval has been deemed to be granted under the provisions of Schedule 2, Part 3, Class M of the GPDO for change of use from shop (Class A1) to dwellinghouse (Class C3) at 1 Bemersley Road, Ball Green, Stoke-on-Trent ST6 8JF, in accordance with the terms of application Ref 6653, dated 1 April 2021, and the plans submitted with it.

2. The approval is subject to conditions that the development must be completed within a period of 3 years from the date of this decision and must be used as a dwellinghouse and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse accordance with Conditions M.2(3) of the GPDO.

Procedural Matter

3. A number of changes have been made to the Town and Country Planning (Use Classes) Order 1987 (the Use Class Order) and the GPDO. In the Use Class Order, the various uses that were in Classes A, B and D have been replaced by a new Use Class E[1], which includes shops. As from 1 August 2021, a new 'Class MA' was brought into effect in Schedule 2, Part 3 of the GPDO[2] to allow any use within the newly formed Use Class E to change to residential, subject to conditions and limitations. However, applications for prior approval under Part 3, Class M will continue to apply until 31 July 2021. As the prior approval application was submitted on 1 April 2021 it remains to be determined under Class M of the GPDO and its conditions and limitations.

Background

4. Schedule 2, Part 3, Class M of the GPDO permits the change of use of a building from a use falling within Class A1 (shops) of the Use Class Order to a

[1] Town and Country Planning (Use Classes) (Amendment) England) Regulations 2020
[2] Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

use falling within Class C3 (dwellinghouse), along with building operations reasonably necessary to convert the building. Development is permitted provided it accords with the requirements of M.1. If the development is permitted under Class M, condition M.2(1) requires the developer to apply to the Council for a determination as to whether the prior approval of the Council will be required as to a number of matters set out in M.2(1)(a) to (f).

5. The Council did not validate the application because submitted plans did not include a scale and scale-bar and there were no plans showing the existing layout of the property. The appellant later submitted existing plans, but no plans showed a scale or scale-bar.

6. The request for plans to show a scale and scale-bar was made on the basis that the Council needed to understand how the existing building operated in order to determine its previous use. The limitations listed in M.1 of the GPDO require knowing the use of the building at a certain date and the Council had some doubts from previous planning applications at the property. The Council insisted that without scaled plans the application would remain invalid. The Council was of the view that the 56-day determination period was not relevant or triggered until the requested plans were submitted.

7. The Council later endorsed its insistence for plans to have a scale and scale-bar so that it could assess if the application met the additional requirements for new residential development under permitted development to meet the national space standards[3].

8. As no scaled plans were forthcoming, the Council later wrote to the appellant advising that it assumed the appellant no longer wished to proceed with the application and that the application file was formally closed.

9. This appeal is, therefore, raised on the basis that the Council did not notify the appellant as to whether prior approval is given or refused within the statutory 56 days following receipt of the application. In these circumstances development within the scope of Class M can go ahead, as the GPDO grants deemed approval for such development where the Council fails to give notice of its decision within the prescribed period.

10. In my view the issue of dispute between the parties is whether the submitted plans were adequate to satisfy the requirements of the GPDO procedure for Class M prior approval applications.

Main Issue

11. It follows from above that the main issue in this appeal is whether prior approval is deemed to have been granted for the change of use from shop (Class A1) to dwellinghouse (Class C3).

Reasons

12. The procedures for making Part 3 prior approval applications are set out in Paragraph W of the GPDO. The statutory period for determination as to whether prior approval is required does not start unless and until all the required information has been received. The pertinent point is therefore what information is required to be submitted.

[3] Technical housing standards – nationally described space standards (March 2015)

13. Under paragraph W(2) a prior approval application must be accompanied by (a) a written description of the proposed development; (b) a plan indicating the site and showing the proposed development; (bc) a floor plan indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls and the elevations of the dwellinghouses; (c) the developer's contact address; (d) the developer's email address if the developer is content to receive communications electronically; and e) a site specific flood-risk assessment where the Environment Agency is required to be consulted.

14. It is clear from the procedures listed above that there is no stipulation for a submitted plan to show a scale or a scale-bar. There is also no specific requirement for 'existing' plans. However, the appellant did submit existing plans. Furthermore, the appellant's floor plans labelled the proposed use of each room and clearly showed the dimensions of each room, although I note that the plans did not show the dimensions of doors and windows as required by the procedure and the Council did not raise this with the appellant. The assessment of prior approval matters has to be made in a context that the principle of the development is not, itself, an issue.

15. The Council referred the appellant to the Town and Country Planning (Development Management Procedure) Order for the requirements for plans and drawings to be drawn to an identified scale. These requirements are for planning applications, which are not prior approval applications. Therefore this requirement does not apply to plans submitted for prior approval applications.

16. Councils do have some powers to request additional information under paragraph W(9). However, any request for additional information does not 'stop the clock running'[4] on the statutory 56-day determination period, with "day 1" being the day following the date of receipt of the application.

17. The Council also has other powers. It may *refuse* [my emphasis] an application under Procedure W(3) where, in its opinion, (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any relevant conditions. In addition, if the Council was of the view that adequate natural light in all habitable rooms could not be provided, it *must refuse* [my emphasis] the prior approval application under procedure W.(2A).

18. I find the Council was mis-guided in what information it needed in the context of the statutory 56-day determination period. It unnecessarily insisted on plans to have a scale and scale-bar and did this outside of the 56-day determination. This went beyond what the procedures stipulate in Paragraph W of the GPDO. Any request for additional information beyond that required by the procedures should have been made within the statutory 56-day determination period.

19. The Council did not use the options available to it to either refuse the prior approval application, if it felt that insufficient information had been submitted, or notify the appellant whether prior approval is given or refused before the expiry of the 56 days. Consequently, prior approval is deemed to have been granted.

[4] *Murrell v SSCLG* [2010] EWCA Civ 1367.

20. The Council's failure to refuse the application within the statutory period means I cannot address any issues of lawfulness as to whether the proposal is permitted development. It also means I cannot determine whether the proposal meets any of the limitations and conditions imposed on permitted development under Class M and whether prior approval ought to be granted given the matters such as transport and highways, contamination, and provision of adequate natural light in M.2(1). Furthermore, on finding that prior approval is deemed to be granted, there is no facility open to me to impose further conditions in addition to the standard ones.

21. The Council also referred to the need to assess the proposal against the national space standards. The GPDO was amended[5] to require such consideration from 6 April 2021. However, this requirement is subject to transitional arrangements such that a prior approval application made before 6 April 2021, as in this case, is not subject to the national space standards. The Council's justification for additional information on this basis was also mis-guided.

Conclusion

22. As notice was not served within 56 days, prior approval is deemed to have been granted. The development can lawfully proceed if carried out in the manner described in accordance with the submitted plans and if it is in fact permitted development in accordance with the conditions and limitations imposed by the GPDO.

23. For the reasons above, the appeal is allowed and prior approval is deemed to be granted.

K Stephens
INSPECTOR

[5] Town and Country Planning (General Permitted Development) (England)(Amendments) Regulations 2020