

Report of the Chief Executive

APPEAL DECISION

APPLICATION NUMBER:	23/00425/PMAP32
LOCATION:	2 - 4 Regent Street, Kimberley, Nottinghamshire, NG16 2LW
PROPOSAL:	Prior Notification for Change of Use from commercial, business and service to dwellinghouses (14 one bedroom apartments)

APPEAL ALLOWED

RECOMMENDATION BY OFFICER – REFUSAL

REASON FOR REFUSAL –

The proposed change of use from commercial, business and service (Use Class E) to 14 dwellinghouses, would result in an unacceptable transport impact and therefore would be contrary to one of the conditions of the prior approval procedure as set out under Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

LEVEL OF DECISION: DELEGATED POWERS

The inspector considered the main issues to consider were:

- 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

Whether planning permission is deemed to have been granted by reason of the timing of the Council’s decision.

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, the Inspector was satisfied that the requested additional and amended plans were reasonable as a means of enabling the Council to determine the application.

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.

The decision notice is dated 31 July 2023. However, from the evidence before the Inspector 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.

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.

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

The Inspector 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 the Inspector's findings above they are not able to consider this matter in further detail.

CONDITIONS

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.

The Inspector also notes the requests for conditions and informatives from consultees. Given the constraints of what the Inspector is able to consider under the Order and the lack of evidence of need for these conditions, the Inspector has no reason to impose any additional conditions. The Inspector recommends that the Council forward the information to the appellant.

CONCLUSION

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, the Inspector concluded that the appeal should succeed.