
Appeal Reference:	2023/A0086
Appeal by:	Mrs. Maura McGeeney
Appeal against:	The non-determination of an application for full planning permission
Proposed Development:	Removal of existing shopfront and the erection of a new shopfront
Location:	31 Upper English Street, Armagh, BT61 7BA
Planning Authority:	Armagh City, Banbridge and Craigavon Borough Council
Application Reference:	LA08/2023/2628/F
Procedure:	Written representations
Finding by:	Commissioner Trudy Harbinson, dated 12 th March 2024

Finding

1. There is a valid appeal.

Reasons

2. Section 40 of the Planning Act (Northern Ireland) 2011 (the Act) addresses the form and content of planning applications. It requires that any application for planning permission must be made in such form and in such manner as may be specified by a development order; must include such particulars, and be verified by such evidence, as may be required by a development order or by any directions given by a council or the Department under such an order.
3. Article 3(2) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (GDPO) specifies that an application for planning permission shall contain a written description of the development to which it relates; the postal address of the land to which the development relates or, if the land in question has no postal address, a description of the location of the land; and the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.
4. It further specifies at Article 3(3) a number of requirements that must accompany the application. This includes a plan sufficient to identify the land to which it relates ((3)(a)(i)), and showing the situation of the land in relation to the locality and in particular in relation to neighbouring land ((3)(a)(ii)).
5. The validity of an appeal to the Commission against the failure to take a planning decision under Section 60 of the Act is entirely dependent on a valid planning application having been received. If it is not valid then the Commission has no jurisdiction to consider the appeal against the non-determination.

6. The application for full planning permission was submitted to the Council on 4th August 2023. The planning application fee was paid on 25th August 2023. On 4th September 2023 the Council emailed the Appellant's agent and referenced Section 3 (6) of the GDPO whereby the Council can request such *further information* (my emphasis) to enable it to determine any application. They stated that in this case, the application site must be edged clearly within a red line on the location plan and should include all the land necessary to carry out the proposed development. They further stated that the shopfront requires the building and it must be also outlined in red. The Appellant responded to the email request by reply, stating that they believed '*the current red line on the site location plan complied*'.
7. In a letter dated 5th September 2023 the Council wrote to the Appellant to advise them that their application submitted on 25th August 2023 was not valid and was being returned as incomplete. They referred to the failure to satisfy Article 3(a)(i) and 3(a)(ii). They stated that the land to which the application relates is the entire building which the Appellant wished to improve and therefore the red line should encompass the whole building subject to works.
8. In this case, the description of development is for the removal of the existing shopfront and the erection of a new shopfront. A site location plan (SLP) at a scale of 1:1250 accompanied the application. It has an arrow pointing to a red line. The arrow is labelled 'Site edged red'. The red line encompasses the extent of the development which is the shop front which is to be removed and replaced as per the description. The remainder of the building is outlined in blue. The site is centred within the site location plan. Properties are numbered and street names identified. The SLP clearly identifies both the land to which the application relates and its position within the locality. It also clearly identifies neighbouring land. Further plans, drawings and a design statement are included which fully describe the proposed development to replace the existing timber shopfront with a painted hardwood shopfront.
9. Article 3(3)a (i) and (ii) require that the plan accompanying the application for planning permission merely identifies the land to which it relates and the situation of the land in relation to the locality. There is no requirement specified within Article 3 of the GDPO as to the extent of a red line on such a plan. The application is for the removal of existing shopfront and the erection of a new shopfront. For the reasons given above the SLP submitted with the application complies with the requirements of Article 3(3)a (i) and (ii) of the GDPO.
10. A third party considered that the application for planning permission had not been properly made. They refer to the time periods as set out at Article 20 of the GDPO and the date the application was received being taken to be the date on when a number of events occurred. They dispute the occurrence required under 20(3)(b), that any certificates or documents required by the 2011 Act have been lodged with the council. They refer to the completion of Certificate A by the Appellant. They state that their client is in actual possession and is the owner of part of the land which forms the rear of the property which is included in the photographs attached to the application. They say the Applicant has not complied with the provision to serve notice on individuals.

11. Section 42(1) of the Act specifies that, a council or, as the case may be, the Department must not entertain an application for planning permission in relation to any land (in this section and in section 43 referred to as “the designated land”) unless it is accompanied by one or other of certificates (a) to (d). The application for the removal of existing shopfront and the erection of a new shopfront was accompanied by a completed Certificate A. As such the requirements of Article 20 of the Order had been fulfilled.
12. I note the third party challenge to the ownership is with respect to part of the yard to the rear and the buildings which surround that part of the yard. An affidavit included does not dispute ownership of the lands referred to as ‘the front of 31 English Street’. As the application is for the shopfront only and does not include the lands to the rear of the property which the third party purports to have an interest in I have no reason to query the completion of Certificate A in relation to the application for the removal of existing shopfront and the erection of a new shopfront.
13. Whilst the appellant included a photographic record of the wider building, the development proposed and the drawings subject to the application relate to the removal of existing shopfront and the erection of a new shopfront only. Given the involvement of the third party, they are aware of the proposed development subject to this appeal and are not prejudiced.
14. The Council only disputed the validity of the planning application under Article 3(a)(i) and (ii) of the GDPO and as such I infer they were satisfied that all other requirements under Section 40 to 42 of the Act and the related provisions of the GDPO have been met. This non determination appeal is accordingly valid.

COMMISSIONER TRUDY HARBINSON

List of Documents

Appellant:- Comment on Validity of Appeal
McCreanor & Co Architects

Third Party:- Comment on Validity of Appeal
Mills Selig on behalf of James Speers