

# Appeal Decision

Site visit made on 25 August 2016

**by Andrew Dale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 September 2016**

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**Appeal Ref: APP/L5810/X/15/3141101**

**First Floor, 20 Water Lane, Richmond TW9 1TJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (hereinafter "certificate").
  - The appeal is made by Ms Lynda Denton (Daycrown Ltd) against the decision of the Council of the London Borough of Richmond upon Thames.
  - The application ref. 15/1137/PS192, dated 2 March 2015, was refused by notice dated 2 July 2015.
  - The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate is sought is described at section 8 of the application form as change of use from office (B1(a)) to residential (C3).
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant, and they are not therefore issues for me to consider, in the context of an appeal made under section 195 of the 1990 Act as amended.
  3. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. As the appellant correctly indicates, the test of the evidence is made on the balance of probabilities. The substantial body of the Council's Planning Report refers to this test but the final recommendation (repeated in the decision notice itself) incorrectly mentions a failure to "demonstrate beyond reasonable doubt". I have not applied that higher standard of test to this case.
  4. The assessment is based on whether or not the change of use would be lawful if instituted or begun at the time of the application for the certificate. As the application was dated 2 March 2015 (and appears to have been received by the Council on 16 March 2015 according to the decision notice), the relevant permitted development rights are in fact contained within The Town and
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Country Planning (General Permitted Development) Order 1995 as amended (hereinafter "GPDO").

5. By notice dated 18 November 2014, the Council refused prior approval of the proposed change of use of the first floor offices at 20 Water Lane to one residential apartment under application ref. 14/4038/P3JPA. An Article 4 Direction came into force on 30 November 2014 which has the effect of taking away permitted development rights for the conversion of offices to residential use in this part of the town centre of Richmond. I have taken into account the documents and the representations submitted relating to these two items of planning history.

### **Main issue**

6. I consider the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

### **Reasons**

7. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
8. Schedule 2, Part 3, Class J of the relevant GPDO sets out the permitted development rights and accompanying limitations and conditions as they apply to development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1(a) (offices) of that Schedule.
9. The Council's decision notice refers to the limitation at Class J.1(b) which excludes the permitted development right where "the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use".
10. It is the actual use which needs to be assessed, not the legal use. This is a question of fact to be established based on the evidence available. If the subject first floor had a mixed use, the permitted development right would not apply. If the appeal unit was not exclusively in use within Use Class B1(a) at the relevant time, then it would not qualify for residential conversion in principle and the Council's alleged failure to comply with the 56-day rule under the provisions of the condition at Class J.2 (read with paragraph N) of the GPDO, when it considered application ref. 14/4038/P3JPA, would be irrelevant. Put another way, the substantive limitations in Class J.1 of the GPDO must be settled first, before compliance with the condition at Class J.2 can have any effect.
11. Examining the use, there appears to be no dispute between the parties that JSP Estates Ltd (B1(a) use) vacated the first floor at 20 Water Lane in December 2012. For the appellant, Simon Bateman has submitted a statement (not in the form of a statutory declaration) which indicates that Your Gym Ltd traded out of the first floor of 18 Water Lane since December 2012 and that an offshoot of that company - Your Pilates Ltd - opened in July 2013 on the first floor of 20 Water Lane, upon the signing of a tenancy agreement in that same

month. A business rates bill and an invoice for rent are supplied with respect to the first floor at 18 Water Lane. The gist of the appellant's case is that the use of the first floor of 20 Water Lane as a Pilates studio (Class D2 use) did not occur until after 30 May 2013. It is said that the first floor was empty office space between December 2012 and July 2013.

12. However, the appellant's evidence, read as a whole, is not sufficiently precise or unambiguous. Simon Bateman acknowledges that he may have used the office space (on the first floor of 20 Water Lane) very rarely as overflow space for his main business Your Gym Ltd if he was short of space. The appellant's appeal statement expands on this by accepting that between December 2012 and 30 May 2013 there was occasional activity amounting to a few exercise classes lasting no more than a few hours on each occasion. Whether those classes were standard gym classes or Pilates classes is not made clear but such classes (of either sort) typically last for a few hours on each occasion they occur and they fall within Use Class D2. This activity points to a Class D2 use or a mixed use of Class D2/Class B1(a) at the relevant time.
13. The appellant appears to backtrack somewhat in the final comments. It is stated there that the occasional use between December 2012 and July 2013 amounted to Simon Bateman using the office space for staff meetings, meetings with professional advisers, interviews, conference calls and the taking of private phone calls. This is notably different to the information presented in the appeal statement. Moreover, if business rates were not paid until October 2013, it is not clear why supporting documents have not been provided, like they have been for 18 Water Lane.
14. The Council has supplied information to contradict the appellant's version of events. An invoice from Unsworth Global Logistics addressed to Your Pilates Studio at 20 Water Lane confirms that a delivery of Pilates equipment took place at the appeal premises in December 2012. An email from Lee Georgs to James Cole (a senior business rates officer at the Council) indicates that without the Pilates equipment, it was not possible to open for trading until 3 January 2013. Neither of these documents makes specific reference to a relationship to 18 Water Lane.
15. The appellant's final response to these documents would appear to imply that Pilates facilities were available at 18 Water Lane from 3 January 2013. However, the appellant's statement says that Your Gym Ltd operated out of 18 Water Lane and Your Pilates Ltd operated out of 20 Water Lane, whilst Simon Bateman's statement is clear that Your Gym Ltd traded out of 18 Water Lane since December 2012.
16. The Council mentions anecdotal information obtained by officers from nearby occupiers as to the occupancy period of Your Pilates Ltd. This information has not been set out in any detail but the exercise undertaken did reveal personal accounts that the first floor space was occupied as a Pilates studio on 30 May 2013. This evidence cannot be entirely discounted since it originates from occupiers who would be familiar with the site and its surroundings on a daily basis. Looked at another way, even on my time-limited visit to the outside of the property, I was able to deduce on the balance of probabilities - by noting a nameplate at the entrance door, the presence of people working at first floor level and numerous open first floor windows - that on 25 August 2016 the

subject first floor was in use by a firm of designers/architects (Sparcstudio) for B1(a) use.

17. Drawing all the above together, I find it more probable than not that the first floor of 20 Water Lane was not being exclusively used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30 May 2013. The evidence points to a D2 use or a mixed D2/B1(a) use at that time. The limitation at Class J.1(b) of the GPDO is not satisfied.
18. It follows that the Council's alleged failure to determine application ref. 14/4038/P3JPA within the 56-day period is irrelevant as the appeal building does not qualify for residential conversion. In these circumstances, it further follows that the Article 4 Direction, as modified by the Secretary of State, bites and also prevents conversion from office to residential use.
19. The proposed development would be development for which planning permission is required. That has not been granted by the GPDO for the reasons given. The scheme would not therefore be lawful if instituted or begun at the time of the application for the certificate.

### **Conclusion**

20. I have taken account of all other matters raised in the written representations, but for the reasons given above I conclude that the Council's refusal to grant a certificate was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Andrew Dale*

INSPECTOR