
Appeal Decision

Site visit made on 11 August 2016

by Elaine Gray MA(Hons) MSc IHBC

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

Decision date: 27 October 2016

Appeal Ref: APP/H5390/W/16/3150605

40 & 42 Rylston Road, Fulham, London SW6 7HG

- 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 (as amended).
 - The appeal is made by Mr Justin Pressland against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2015/05533/PD56, dated 27 November 2015, was refused by notice dated 20 January 2016.
 - The development proposed is described as 'change of use of ground floor office (class B1) into 2 bedroom self-contained flat (class C3)'.
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 for the change of use of ground floor office (class B1) into 2 bedroom self-contained flat (class C3) at 40 & 42 Rylston Road, Fulham, London SW6 7HG in accordance with the details submitted.

Main Issue

2. The main issue is whether the proposal satisfies the requirements of the 2105 GPDO with regard to being permitted development for a change of use from office (Use Class B1(a)) to a residential unit (Use Class C3), having particular regard to whether the appeal site can be considered to have or have had a B1(a) use.

Reasons

3. The appeal site comprises the ground floor of the premises at 40 and 42 Rylston Road. The application for prior approval for the proposed change of use was refused by the Council as it considered that the unit at 42 Rylston Road did not have a B1(a) use, and so the proposed change of use would not be permitted development. The Council raises no issue with regard to the unit at 40 Rylston Road, which is accepted to fall within B1 use.
 4. The GPDO states that development is not permitted if, amongst other things, the building was not used for a use falling within Class B1(a) (offices) on 29 May 2013, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
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5. Planning permission¹ was granted on 30 December 1998 for the change of use of No 42 from a hairdressers (Class A1) to an office (Class B1). However, the Council states that No 42 is in Class A2 use, and has been so since at least 2005. This statement is based on information from the Valuation Office Agency and the Council's Business Rates Department. The Council argues that the A2 use is now lawful, having operated for 10 years. However, that would not have been the case in May 2013, as the use would only have existed for approximately eight years. In any case, the Council has not submitted any substantive documentary evidence in respect of the stated A2 use.
6. I note the Council's contention that a 2013 planning application² shows both units as Class A2. The appellant states, however, that the application refers to the garage/store at No 40, and that the use classes shown for the units at Nos 40 and 42 were a mistake on the part of the architect. In view of the lack of corroborative evidence with regard to the A2 use and its lawfulness, I am able to afford little weight to this circumstance.
7. As there is no compelling evidence of an intervening or different use since the grant of the 1998 permission, I am satisfied that the last lawful use of No 42 was as a B1 office use. That being the case, I find that the permitted development right applies, and has been complied with. I therefore find that the proposal is permitted development under Class O of the GPDO.
8. In addition, the GPDO states that development is permitted subject to the prior approval of the local planning authority in relation to, amongst other things, contamination risks on the site, and the impacts of noise from commercial premises on the intended occupiers of the development. Whilst the planning officer's report makes reference to an internal consultation raising objection in respect of contamination, there is no further evidence on this matter. The matter of noise is also referred to in the Council's comments on the appellant's case, but no further information is provided. I therefore have no substantive grounds to conclude that prior approval will be required with regard to either of these issues.

Conclusion

9. I therefore conclude that the proposed development would accord with the requirements for development permitted under Class O of Schedule 2, Part 3 of the GPDO and that the appeal should be allowed and approval granted, subject to the condition that it must be completed with a period of 3 years starting with the prior approval date.

Elaine Gray

INSPECTOR

¹ 98/02126

² 2013/04458/FUL