The Planning Inspectorate

Appeal Decision

Site visit made on 18 July 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 31 October 2016

Appeal Ref: APP/L5240/X/16/3148017
951 Brighton Road, Purley, Croydon CR8 2BQ

- 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 (LDC).
- The appeal is made by David Bright Estates against the decision of the Council of the London Borough of Croydon.
- The application Ref 15/04645/LE, dated 15 October 2015, was refused by notice dated 21 December 2015.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of upper floors as two flats.

Decision: The appeal is dismissed

1. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of application of the use, development or other matter described in that application, or that description as modified by the local planning authority or a description submitted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based solely on the facts of the case and relevant judicial authority.

2. The appeal property is a three-storey mid-terrace building located on the south side of Brighton Road. The property is currently used as estate agents, a use that falls within Class A2 (financial and professional services) as defined by the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order). The upper floors are currently in use as residential flats. There is some dispute as to exactly when the building was converted to its current layout. There is, however, consensus that this conversion took place at some point between July 2013 and March 2014, the former being the date when the appellant purchased the property and the latter being the last date on which the premises were recorded as being vacant for the purposes of business rates.

3. For the purposes of this appeal, it is not essential for me to ascertain the exact date on which the conversion took place: on both of the above dates, the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("GPDO") was then in force. It is against the provisions set out in the GPDO that I must assess whether the use of the upper floors as two flats was lawful on the date of which the conversion took place.

4. The provisions on the GPDO in relation to development consisting of a change of use of a building within Class A1 or A2 of the Use Classes Order are set out at Article 3, Schedule 2, Part 3, Class F. The provisions of Class F were amended by the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2012 to include development consisting of a change of the use of a building:

   (a) to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to two flats, from a use for any purpose within Class A1 of that Schedule;

   (b) to a mixed use for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order and as up to two flats, from a use for any purpose within Class A2 of that Schedule

   (c) where that building has a display window at ground floor level, to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to two flats, from a use for any purpose within Class A2 (financial and professional services) of that Schedule.

5. Two general principles emerge from the provisions within Class F. Firstly, the mixed use permitted derives from the Use Class within which the use of the building from which the change of use takes place falls. Secondly, the change of the use of a building permitted by Class F relates to a building that is wholly within either Class A1 or Class A2 use at the time the change to the mixed use is made. I shall assess the use of upper floors of the appeal property as two flats having regard to these two principles.

6. Although the date on which the property was converted into two flats is disputed, it is common ground that the last use of the property prior to conversion comprised a retail unit on the ground floor with residential above. The area of dispute is whether this was two independent uses, as the Council contends, or a mixed use as suggested by the appellant. However, before addressing that question, I must first consider the nature of the retail use that was taking place on the ground floor.

7. The use of the ground floor prior to conversion is described by the appellant as a "bookmakers" and, as the appellant explains, there was evidence of that use having taken place when the property was purchased. This is further corroborated by the statement by one Mr Traian Popescu, the foreman in charge of the conversion of the property into two flats, who also describes the previous use of the premises as being a "betting shop" on the ground floor with a single residential dwelling on the upper two floors.

8. The Interpretation paragraph in the Use Classes Order indicates that no class in the Schedule to that Order includes use as a betting office (paragraph 2(6)(n)). It follows that use a betting office, or otherwise described as "bookmakers" or "betting shop", is not a use that falls within either Class A1 or Class A2 of the Use Classes Order. The provisions within Class F of the GPDO relate only to uses in Class A1 or Class A2 of the Use Classes Order. This is fundamental because, if the use of the appeal property at the time the upper floors were converted into use as two flats was not in either Class A1 or Class A2 use, the property could not have benefitted from the provisions within Class F of the GPDO.

9. The Council confirm that they do not hold any records in respect of the lawful planning use of the ground floor, although they do have records in relation to a Licensing Application for a betting license (Ref No: 08/2877/LIC). The Business Rates taken from the Valuation Office in May 2016 also record the premises as a Betting Shop and Premises in April 2010. This would again be consistent with the use of the ground floor as a betting office. However, the date of the Licensing Application would suggest that the use as a betting office may not have been the lawful use of the ground floor at the time the conversion to two flats took place and I note that the Council raise this same point.

10. The appellant has provided some details of the planning history of the property. This indicates that planning permission was granted in July 1964 for use as offices, although it is not clear whether this related to the ground floor only or the property as a whole (Ref 64/1452). A year later, planning permission was granted for reconstruction of a building society office and residential flat for staff over (Ref: 65/1610/20/583). Then, in 1992, planning permission was sought for use of the ground floor for purposes within Class A3 (Ref: 92/1530/P). The appellant explains that this application was not determined because the proposed use was considered to constitute permitted development, although no documentary evidence has been provided in support of that or to explain which Class of the GPDO was relied upon.

11. The appellant considers that, because there is no record of planning permission for the use as a betting shop and that the previous use of the property was A3, the current use of the property as A2 did not require planning permission. That may or may not be the case, but that is not the question before me. The question before me is the lawful use of the property on the date the conversion to two flats took place, and in that respect the appellant's sequence of events raises more questions than it answers. This is because it introduces the possibility of an intervening A3 use, that not being one of the uses from which the change of the use of a building can be made within the provisions within Class F of the GPDO.

12. I therefore cannot discount the possibility that an A3 use of the ground floor was implemented in or around 1992. Assuming that the appellant is correct in saying that this was deemed to be permitted development, this would then have become the lawful use of the ground floor. This in turn raises the further prospect that the change of use to a betting office was made not from an A2 use but rather from an A3 use. In that scenario, the lawful use of the ground floor at the time that the conversion into two flats was made would have reverted from the use as a betting office to an A3 use, such that use of upper floors as two flats could not have been permitted development under Class F.

13. My difficulty is that I have little documentary evidence to support the sequence of events advanced by the appellant. Moreover, although I have reservations about the appellant's assertion that the A3 use of the ground floor was deemed to constitute permitted development, in the absence of documentary evidence this is something that I am unable to discount entirely. Consequently, although the Council has provided no evidence to contradict the appellant's version of events or make them less than probable, I do not find the appellant's evidence to be sufficiently precise and unambiguous to show that the lawful use of the ground floor of premises at the time the conversion into two flats took place was in either A1 or A2 use. I therefore cannot be certain that the premises benefitted from the provisions in Class F at that time.

14. The majority of the evidence provided by the appellant and responded to by the Council relates to the question as to whether the property was in a 'mixed use' at the time the conversion works were substantially complete. In this respect, I note firstly that the planning permission granted in 1965 (Ref: 65/1610/20/583) makes specific reference to a "building society office and residential flat for staff over" in the description of development. A letter from the Nationwide Building Society indicates that this permission was implemented, and also indicates that the flat was used by members of that Building Society's staff. It therefore seems probable that the flat was used in connection with the ground floor at that time and for a period afterwards.

15. However, planning permission was granted in July 2012 for the re-positioning of entrance doors to the first floor maisonette (Ref 12/00821/P). This is consistent with the upper floors being in a separate residential use (albeit, one single unit), but also suggests a change in the way in which the residential unit was occupied compared to when the ground floor was occupied by the Nationwide Building Society. Further evidence of this change is provided in the Heads of Terms for the purchase of the property which, although itself undated, appears to correlate with an invoice from the purchaser's solicitors dated July 2013. The former clearly describes the premises as comprising a ground floor retail shop with residential accommodation above with its own independent access from the rear.

16. I accept that an independent access does not necessarily mean that the flat was not occupied by those associated with the retail unit on the ground floor, but in this case the evidence tends to suggest that the residential flat was occupied separately from the ground floor. This evidence is derived from the Business Rates taken from the Valuation Office in May 2016 and the Council Tax Records. The former date back to 2011 and clearly relate to the ground floor only: there is no mention of the residential flat being included as part of the premises for valuation purposes. The latter shows that the flat was initially registered for Council tax purposes as a maisonette over two floors and under a separate address from the ground floor, that being 951A, Brighton Road, Purley, Surrey CR8 2B, before later being registered as two flats (Nos. 951A & 951B).

17. I recognise that, taken in isolation, none of the above is definitive evidence that the residential flat was occupied separately from the ground floor retail use at the time the conversion to two flats took place. But taken together and with no documentary evidence to the contrary, the re-positioning of the entrance doors, the Heads of Terms for the purchase of the property, the Valuation Office record and the Council Tax record collectively lead me to the conclusion that, on the balance of probability, this was the case.

18. Having regard to the uncertainty over the lawful use of the ground floor and the probability that the residential flat was occupied separately from the ground floor retail use, I conclude that on the balance of probability the whole of the building was not in Class A1 or Class A2 use at the time the conversion to two flats took place. The provisions within Class F of the GPDO relate to the use of a building either wholly in Class A1 or Class A2 use to a mixed use comprising those uses and up to two flats. It follows that the appeal property would not have benefitted from the provisions with Class F of the GPDO on the basis that the building was not wholly in either a Class A1 or a Class A2 use at the time the conversion took place.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the upper floors as two flats at 951 Brighton Road, Purley, Croydon CR8 2BQ was well founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

20. The appeal is dismissed.

Paul Freer

INSPECTOR