

Appeal Decision

Site visit made on 4 October 2016

by David Cliff BA Hons MSc MRTPI

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

Decision date: 14th December 2016

Appeal Ref: APP/N5660/W/16/3154542

169 Hamilton Road, London SE27 9SW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class O of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Robert Wheeler against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/01593/P30, dated 9 March 2016, was refused by notice dated 12 May 2016.
 - The development proposed is 'change of use from office (Class B1(a)) to a dwelling (Class C3) comprising two bedrooms, living, dining room, bathroom, shower, study, store and a cloakroom'.
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for change of use from office (Class B1(a)) to a dwelling comprising two bedrooms, living, dining room, bathroom, shower, study, store and cloakroom (Class C3) at 169 Hamilton Road, London SE27 9SW in accordance with the details submitted pursuant to Schedule 2, Part 3 Class O of the GPDO, and subject to the following condition:
 - 1) Prior to the occupation of the development hereby approved, details of the provision to be made for cycle parking shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall thereafter be implemented in full in accordance with the approved details before the use commences and shall thereafter be retained solely for its designated use.

Main Issue

2. I consider the main issue to be whether the proposal satisfies the requirements of the GPDO with regard to being permitted development for a change of use from an office to a dwelling, having particular regard to whether the appeal building can be considered to have been in B1(a) use on 29 May 2013.

Reasons

3. The appeal premises relates to the ground floor and basement of 169 Hamilton Road. There is an existing residential unit at first floor level. For the avoidance of doubt Article 2(1) of the GPDO defines a 'building' to include any part of a building for the purposes of Class O.
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4. The Council cites a document from the Valuation Office Agency that describes the ground floor of the premises as 'Retail Zone A' and 'Retail Zone B' as at 1st April 2010 and the basement of the premises as 'internal storage' and 'office'. The description for the property as a whole however is described as 'office and premises'. However, taking account of the different uses described in different parts of this document and the comments of the appellant it, this evidence is not conclusive in my consideration of the appeal. It also dates back to 2010.
5. The appellant has provided a Statutory Declaration in order to seek to clarify and confirm the exact position on the use of the premises as on 29th May 2013. This includes confirmation that the appellant has used the premises for a chartered surveyors office since about 1986 and that in May 2013 both the ground floor and basement was in use as offices. Specific evidence is included seeking to demonstrate the continued use of the premises for an office use since the appellant first moved in. I have given this substantial weight.
6. Planning permission was granted in 1987 for a change of use of the appeal premises from retail use to a chartered surveyor's office. In 1990 planning permission was granted at appeal for an extension to the rear of the office. In his decision letter, the Inspector states that *the office does not provide a service principally to visiting members of the public, and can therefore be regarded as Class B1 in the Town and Country Planning (Use Classes) Order 1987*.
7. The Council draws attention to a condition of the 1987 change of use permission that restricted the use of the premises for the purposes approved as a chartered surveyor's office and for no other use (including any other use purpose in Class II of the Use Class Order 1972). That Class is equivalent to Class A2 of the current Use Classes Order. Notwithstanding this, it seems to me that the use of a chartered surveyor's office is able to be considered as Class B1(a). The services of such a use do not appear to have been provided principally to visiting members of the public and the previous Inspectors comments are persuasive in this respect.
8. I do not have any compelling evidence from the Council that the use of the building as a chartered surveyor's office has been anything other than Class B1(a) or that it was unlawful in May 2013. There are also no details before me of any enforcement investigation or action carried out by the Council in this respect.
9. I have also considered this in the context of Article 3(4) of the GPDO but find that whilst this condition seeks to prevent other uses (including those within a superseded Use Class Order), it does not explicitly or implicitly restrict development which might otherwise be granted under the GPDO, including for the proposed use as a dwellinghouse.
10. I am satisfied from the evidence before me, including the appellant's statutory declaration and accompanying information, that the use of the premises has remained as a chartered surveyor's and does not appear to have been provided principally to visiting members of the public. On this basis the use falls with Class B1(a) and, from the evidence available, it is reasonable to consider that it did so on 29 May 2013.
11. The Council has not raised any further objections in relation to the scope of issues specified in paragraph O.2. Whilst amendments were made to the GPDO

in April 2016 which include noise as a matter to be considered under Class O, this application was submitted prior to the publication of the amendments and has not been raised as an issue by the Council. It is not therefore a matter which needs to be considered as part of this appeal.

12. I have considered the two conditions suggested by the Council in the event that approval is given. The Council's suggested condition regarding waste and recycling storage goes beyond the scope of the issues specified in paragraph O.2 and so is not necessary or reasonable in this case. I have imposed a condition requiring details of cycle parking to promote sustainable modes of transport. This condition relates to the transport impacts of the development and so is both reasonable and necessary.
13. In granting approval the appellant should also note that the GPDO under Class O requires that the development must be completed with a period of 3 years starting with the prior approval date.
14. Having considered all other matters, I conclude that the appeal should be allowed and approval granted.

David Cliff

INSPECTOR