
Appeal Decision

Site visit made on 12 December 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 11 January 2017

Appeal Ref: APP/U5930/W/16/3157909

Former Crownlea Plant Hire & Sales Ltd, 253 Wood Street, Walthamstow EN17 3NJ

- 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) (England) Order 2015 (as amended).
 - The appeal is made by Crownlea Group against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 160217, dated 23 December 2015, was refused by notice dated 14 April 2016.
 - The development proposed is "a change or part change of use of a building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order 2015 (as amended) from a use falling within Class B1 (Office) of that Schedule".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development is adapted from the Council's decision notice in the absence of a description provided by the application form.
 3. There is a difference of opinion between the parties in terms of the accuracy of the site address provided on the application form. Based on my observations of the site and its surroundings, the building is located to the rear of a building addressed as 247-251 Wood Street. Furthermore, the appellant's evidence includes a VOA Business Rates – Valuation dated 21 April 2010, which identifies the address of the building as 253 Wood Street. Consequently, in the interest of certainty with respect to the building to which this appeal relates I have amended the site address accordingly.
 4. The appellant submitted an application for prior approval under Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for change of use of part of the building to a residential use. Class O of the GPDO, subject to specific requirements and restrictions, permits the change of use of offices in Class B1(a) to a use falling within Class C3 (dwellinghouses) .
 5. The permitted development right, amongst other requirements, is subject to paragraph O.1 (b) 'the building having been in a use falling within Class B1(a)
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(offices) of the Schedule to the Use Classes Order¹ – (i) on 29 May 2013, or (ii) 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. The Council refused the application on the basis that at the time of a site visit the use of the ground floor was B2 light industry that had operated since before 30 May 2013 and that upper floors were vacant and derelict, and therefore, were not in B1(a) use with the last known use unconfirmed.

6. The Council have also indicated, in any case, that prior approval would be required to assess the transport and highway impacts of the development in accordance with paragraph O.2, to which the provisions of paragraph W of the GPDO would apply. The Council's evidence indicates that this relates to the location being within a controlled parking zone (CPZ) and concerns regarding the effect of parking overspill on the local highway network and highway safety.

Main Issues

7. The main issues are:

- whether the proposal would be permitted development, with particular regard to whether the requirements of Class O, paragraph O.1 (b) of the GPDO would be met, and;
- If so, whether or not the transport and highways impacts of the development would be acceptable with regard to paragraph O.2 (1) of the GPDO.

Reasons

Whether the proposal would be permitted development

8. The appeal site is identified in the submitted plans by a red line on a 1:1250 location plan and a 1:500 block plan as a building and existing yard on the eastern side of Wood Street. The site is in a backland position accessed to the southern side of a building addressed as No 247-251 which fronts the road.
9. The building has an irregular wedge shaped footprint consisting of two linked sections. The front section of the building closest to the access onto Wood Street is a brick structure with part rendered walls and a mansard roof, consisting of three floors. The rear section of the building also has brick walls but has a pitched roof with a lower ridge height. The layout of the rear section of the building consists of a warehouse, workshop and ancillary office floorspace.
10. The curtilage surrounding the building includes off street parking for the building, a detached outbuilding and areas of open storage. Additional buildings to the north, outside of the appeal site identified on the submitted plans, also utilise the yard for access from Wood Street.
11. At the time of my visit, the first and second floors of the front section of the building were not occupied. However, part of the ground floor of the front section of the building and the rear section of the building consisting of a workshop and warehouse with ancillary offices were in use, together with associated car parking and open storage areas.

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

12. A building for the purposes of Class O of the GPDO is defined as, including any structure or erection, and includes any part of a building². The part of the building and its curtilage that is currently in use as a warehouse, workshop and ancillary offices is not in Class B1(a) use and therefore, does not benefit from permitted development rights under Class O of the GPDO. It is therefore, necessary to assess whether any other part of the building has been divided into a separate planning unit and if so, whether it would meet the requirements of paragraph O.1 and benefit from the permitted development rights under Class O of the GPDO.
13. The location and block plans, at the scale supplied, cannot reasonably define the boundary of the part of the building subject to this appeal to differentiate between the intended change of use and the parts of the building to remain as a workshop and warehouse with ancillary offices. That information is however clearly indicated on the proposed ground floor, first floor and second floor plans as submitted which identify a proposal for change of use of part of the front section of the building to a cumulative total of 25 1-bed flats. In such circumstances, limited weight is given to the matter of where the red line is drawn in terms of defining whether the building is a single planning unit or otherwise.
14. The appellant has stated that B1(a) offices within the part of the building to which the change of use is proposed have been a separate and self-contained entity since at least 2000. To support this, a VOA Business Rates Valuation document dated 21 April 2010 includes a breakdown of parts of the building into individual floorspace components, including subdivision of office floorspace at ground, first and second floor levels. However, a valuation calculation of the building for business rates purposes is not conclusive evidence that parts of the building have been occupied as a separate planning unit prior to, on or after 29 May 2013.
15. The appellant has indicated that the building was occupied entirely by the Crownlea Group until 2011, after which time parts of the building were sub-let to short term tenants. There is no substantiated evidence before me, relating to which part of the buildings were sub-let and for what periods of time. The business rates information provided by the appellant in terms of the occupation of the building by Blok N Mesh UK Ltd until 1 June 2013 and by One Stop Sourcing & Supply Co from 1 July 2014 up to 29 August 2014 does not relate to specific parts of the building. Consequently, it is not evidence of the occupation of offices as a separate planning unit within the building.
16. During my visit, the first and second floors of the building subject to this appeal were vacant but had internal partitions, fixtures and fittings consistent with a recent use as B1(a) offices. The condition of these parts of the building and the time period of any vacancy would not meet the established legal principles of abandonment³. Furthermore, the offices on both first and second floors would be capable of independent occupation from the warehouse, as there is a separate access via a shared stairwell. Nevertheless, as previously stated, specific periods of independent occupation of these parts of the building have not been substantiated based on the evidence before me.

² Article 2 (1) of the GPDO

³ Hughes v SSETR [2000] 80 P&CR 397

17. In any case, the ground floor of the part of the building subject to this appeal has direct access to both the shared stairwell and 3 internal access points into the warehouse and workshop which wraps around it. The toilet facilities included in this part of the building at ground floor level are directly accessed from the warehouse and workshop. At the time of my visit, the office and ancillary storage space did not appear to be in current use. Nevertheless, given its existing layout and in the absence of contrary evidence, it would appear highly unlikely that it had been occupied independently at any time, when previously in use.
18. Having taken all of the above into account, I cannot conclude from the evidence before me, that on, before or after the 29 May 2013, the part of the building to which the change of use is proposed was in B1(a) use as a separate planning unit or units from the remainder of the building. In such circumstances, the existing building must be considered to comprise a mixed B1(a), B2, B8 use or *sui generis* use falling outside of the Town and Country Planning (Use Classes) Order 1987 (as amended). I, therefore, must conclude that the change of use would not satisfy the requirements of Schedule 2, Part 3, Class O of the GPDO, with particular reference to paragraph O.1 (b), and therefore is not development permitted by it.

Prior approval

19. Given my conclusion that the change of use would not be development permitted under Schedule 2, Part 3, Class O of the GPDO, there is no need for me to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

20. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class O of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed under the prior approval provisions set out previously.
21. The appeal is, therefore, dismissed.

Gareth Wildgoose

INSPECTOR