

Appeal Decision

Site visit made on 13 January 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 15 February 2017

Appeal A: APP/L5810/W/16/3156540

Units 1 and 3 Foxton Mews, Richmond, Surrey TW10 6JR

- 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.
 - The appeal is made by Harepath Estates (LLP) Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/1014/GPD15, dated 11 March 2016, was refused by notice dated 6 May 2016.
 - The development proposed is change of use from B1(a) office use to C3 residential use to provide one 1 bedroom and one 3 bedroom residential unit.
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Appeal B: APP/L5810/W/16/3156541

Units 1 and 3 Foxton Mews, Richmond, Surrey TW10 6JR

- 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.
 - The appeal is made by Harepath Estates (LLP) Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/1015/GPD15, dated 11 March 2016, was refused by notice dated 6 May 2016.
 - The development proposed is change of use from B1(a) office use to C3 residential use to provide one 1 bedroom and one 3 bedroom residential unit.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matter

3. Appeal A and Appeal B are linked appeals in so far as they relate to the same site and are made by the same appellant. Furthermore, the proposal to change the use from office use to residential use is the same and in both appeals the evidence upon which the application is based is almost identical. I am therefore satisfied that there is sufficient cross over to enable me to consider them in a single decision and I deal with them on that basis.

Applications for Costs

4. In each Appeal, an application for costs was made by Harepath Estates (LLP) Ltd against the Council of the London Borough of Richmond-upon-Thames. These applications are the subject of separate Decisions.
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Main Issue

5. The main issue is whether the proposal complies with the requirements of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") with particular regard to its use.

Reasons

6. The appeal site consists of a former Victorian stable block which has been converted into a number of small two storey buildings, some of which have been altered to provide residential dwellings under Class O permitted development rights. The appeal properties themselves comprise two separate units known as Nos 1 & 3 Foxton Mews. The site is located in the St Matthias Conservation Area and is located in easy access to the Town Centre.
7. Paragraph O.1 of the Order permits the change of use of a building falling within class B1(a) (offices)¹ to a residential dwelling subject to a number of restrictions. These include where the site was *not used* for a use falling within Class B1(a) on 29 May 2013² or in the case of a building which was in use before that date but not in use on that date, when it was last in use ("the Relevant Date"). Furthermore, Article 3(5) of the Order restricts permitted development in cases where an existing use is unlawful.
8. The appellant has provided a considerable amount of evidence to indicate that the site was used for offices falling within use class B1(a) between 1995 and 2007. The lease dated 2 March 1995, which includes the appeal site, restricts the use of these units to class B1. Furthermore, I have been provided with two statutory declarations which confirm, on oath, that the units were used for a use falling within B1(a) between the period 1995-2007. I afford this evidence considerable weight and accept that it indicates that the units were most probably used for purposes falling within class B1(a) during that period. I am therefore satisfied that its lawful use would most likely fall within class B1(a).
9. However, while I note the appeal decisions³ referred to by the appellant, the Order is not only concerned with the site's lawful use. Although it seeks to prevent unlawful use triggering permitted development rights, it also requires the building's use to be assessed both at the Relevant Date and at the time the application is being considered. While I note the appellant's argument that there has been insufficient time for a material change of use to have taken place, in undertaking such an assessment, it is the *actual* use of the site with which the Order is concerned as opposed to its lawful use or whether any material change has taken place.
10. In this case there is a lack of information regarding the use of the site between 2007 and the present date. The application form indicates that it was last in use in 2011. However, the appellant has provided no evidence to indicate what its actual use was between 2007 and 2011 and, in the absence of such, I cannot be satisfied that the units were used for office purposes during this period. Accordingly, I do not consider that there is sufficient evidence to demonstrate that the site was actually used for a purpose falling in Class B1(a) on the Relevant Date.

¹ together with any land within its curtilage

² Paragraph O.1(b)

³ APP/L5810/W/15/3065819 & APP/L5810/W/15/3133462

11. Furthermore, in terms of its present use, I observed on site that in both units considerable conversion work had already been undertaken to alter them for residential use. While fit out works appeared to be on-going in unit 1, the conversion of unit 3 appeared considerably advanced, with the addition of a domestic bathroom, kitchen and living areas together with soft furnishings and a large wall mounted television. While I noted that a business appeared to be operating out of unit 3, with some rooms set out as working areas and an array of office paraphernalia, these formed only a small part of the overall space. The clear impression was of a residential dwelling which may be part used for office or business purposes. As such, I am not convinced that the present use of unit 3 would fall solely within a B1(a) use.
12. Accordingly, while I accept that the evidence indicates that the lawful use of the site between 1995 and 2007 would most likely have fallen within a B1(a) use, I do not consider that the appellant has provided sufficient evidence to enable me to establish with any certainty what its use was at the Relevant Date. Furthermore, based on my on-site observations, I am not persuaded that unit 3 is currently used solely for a B1(a) use. Accordingly, I do not consider that the proposal benefits from the permitted development right set out in Class O of the Order.

Conclusion

13. For the reasons set out above, I conclude that the appeals should be dismissed.

Rory Cridland

INSPECTOR