
Appeal Decision

Site visit made on 20 February 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 8th March 2017

Appeal Ref: APP/U5360/W/16/3159284

1 1/2 Ardleigh Road, London N1 4HS

- 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 Ms Catherine Collins against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2016/0609, dated 18 February 2016, was refused by notice dated 18 April 2016.
 - The development proposed is the change of use of the premises from B1(a) to one residential (C3) dwelling, including minor internal alterations and provision of two cycle storage spaces.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted using forms intended to be for a lawful development certificate. From the evidence before me, the Appellant confirmed to the Council that it was the intention to apply for a prior approval for the change of use of the premises from office use (Use Class B1(a)) to a dwellinghouse (Use Class C3). The proposal was determined by the Council on that basis, and the appeal documentation also reflects that. I have therefore determined the appeal on this basis.

Main Issue

3. The main issue is whether the proposal would be permitted development.

Reasons

4. For the permitted development rights to exist for the change of use of the premises the use of the premises has to be lawful. From the evidence before me the planning history for the site indicates that the building had permission for light industrial use in January 1981¹. The draft statement of common ground indicates that the previous occupier, Spinner Design Limited, used the building as a Class B1(a) premises between 1999 and 2010. In the absence of any contradictory evidence, the lawful use of the premises at that time would have been Class B1(a).

¹ 11/5115A

5. Since that date, there have been no planning permissions sought for an alternative use of the premises, save for the recent applications for the change of use to residential use. Therefore, on the balance of probability, the lawful use of the premises remains Class B1(a).
6. Having established the lawful use of the premises, the next consideration is what the use of the building was on the 29 May 2013. The Council acknowledge that a production company is running from the premises but do not consider that the entire floor space is being used as an office.
7. The Appellant has provided details of the non-domestic rates which describes the building as "offices and premises". A statutory declaration has also been provided which states that the premise has been used as an office to run all the day to day operations of the business. The declaration further states that on six occasions since September 2010, for a total of 30 weeks, the building has been used to host exhibitions to prospective clients.
8. The Council identified six periods where exhibitions took place between May 2011 and November 2014, which cumulatively totalled around 33 weeks over a three and a half year period. Four of those exhibitions (totalling around 23 weeks) were before 29 May 2013 with the longest exhibition totalling 57 days.
9. It is also noted that the Appellants website states that the premise is a "private contemporary arts space in Hackney's De Beauvoir Town, hanging a range of curated shows throughout the year". This combined with the length of time of the exhibitions referred to by the Council, leads me to have serious doubts over the actual use of the premise over this period.
10. To my mind, the extent of the exhibitions indicates that the building was being used as both an office and as a gallery. Given the extent of the exhibitions, this goes beyond what could be considered to be an incidental use. Whilst the evidence before me does not indicate an exhibition was taking place on 29 May 2013, it is significant to note that there was an exhibition in September 2013, which indicates that the mixed use of the premise was still occurring.
11. In order to benefit from the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) the building must have been used for a use within Class B1(a) of the Schedule to the Use Classes Order on the 29 May 2013.
12. On the evidence before me (notwithstanding the lawful use of the premises as a Class B1(a) office), the premise was in mixed use as an office and as a gallery on 29 May 2013 and, therefore, the proposed change of use to residential is not permitted development.
13. Consequently, it is development for which an application for planning permission is required. An application for planning permission 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 in the GPDO. Accordingly, the appeal is dismissed.

Chris Forrett

INSPECTOR