

Appeal Decision

Site visit made on 23 May 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/N5660/W/17/3170126

409 (inc. 206-210 Kennington Park Road) Kennington Road, London SE11 4BT

- 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 Standard Securities Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/06939/P30, dated 13 December 2016, was refused by notice dated 8 February 2017.
 - The development proposed is change of use from Class B1 (a) offices to Class C3 residential use at 409 (inc. 206-210 Kennington Park Road) Kennington Road, London to include 65 no. dwellings comprising a mix of studios and one bedroom flats.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A signed and dated agreement pursuant to Section 106 of the Town and Country Planning Act, 1990 was submitted following my site visit. I shall return to this matter later in my decision.

Main Issue

3. The main issue is whether the proposed development satisfies the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) with regard to being permitted development for a change of use from a use falling within Class B1 (a) offices to a use falling within Class C3 (dwellinghouses), having particular regard to whether the appeal building is within a safety hazard area.

Reasons

4. The appeal property is a five storey building at the junction of Kennington Road and Kennington Park Road. It has a car park to the rear providing approximately 22 spaces. The building is currently in office use. The proposal is to convert the building to residential use providing 65 flats.
 5. Class O of Part 3 of Schedule 2 to the GPDO provides that the following is permitted development: *Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1 (a)*
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(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule. However, under paragraph O.1 of Class O development is not permitted for various reasons including if the site is, or forms part of, a safety hazard area.

6. The Council refused to grant approval on the basis that the proposal is within a safety hazard area and is therefore not permitted development. The Council has identified the appeal site as being within a Safety Hazard Zone: 'H1725 – Southern Gas Networks Kennington Gas Holder Station'.
7. The appellant argued that as the ownership of the Gas Holder Station has changed, under Section 17 of the Planning (Hazardous Substances) Act 1990 a Hazardous Substances Consent (HSC) should automatically be revoked. As a consequence it was argued that the Health and Safety Executive (HSE) Consultation Zone representing the safety hazard area should cease to apply and should be removed. The appellant also argued that under Section 14 of the same Act the hazardous substances authority, in this case the Council, may revoke or modify a HSC if any material change in circumstance merits it. The appellant noted that as the gas holders are no longer in use, a material change of use of land to which a HSC applies had occurred, justifying its removal.
8. Whether or not the circumstances justify the modification or revocation of the HSC it is clear from the evidence before me, and in particular correspondence with the HSE, that the HSC for the Kennington Gas Holder Station has not been revoked. Therefore the HSE's Consultation Zone, which constitutes a safety hazard area, remains in place.
9. The appellant highlighted the lack of consistency in the Council's approach in dealing with previous applications for prior approval in the vicinity of the Kennington Gas Holder Station. A number of applications were approved notwithstanding the fact that they appear to be within the HSE Consultation Zone. I do not accept that this implies that the HSE Consultation Zone has been revoked or amended and the evidence from the Council and the HSE does not support this contention. I also note that the appellant indicates that the Council has been inconsistent in terms of a previous application for prior approval at the appeal site. Notwithstanding these concerns I have determined this appeal on the basis of the information before me.
10. I therefore find that the appeal building is within a safety hazard zone. Consequently it has not been demonstrated that the proposed change of use constitutes permitted development within Class O. As such a determination as to whether prior approval is required in respect of the conditions under paragraph O.2, including transport and highway impacts which are specifically addressed through the Section 106 agreement, is not required.
11. Similarly, I have had regard to the comments from interested parties and to the National Planning Policy Framework. However, as I have found that the proposal does not constitute permitted development these are matters which I do not need to consider further.
12. For the reasons set out above, the appeal is dismissed.

Kevin Gleeson

INSPECTOR