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## Appeal Decision

Site visit made on 11 December 2017

by **JP Roberts** BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 26<sup>th</sup> January 2018

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### Appeal Ref: **APP/P1235/W/16/3165092**

### Former Council Offices, North Quay, Weymouth, Dorset DT4 8TA

- 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, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
  - The appeal is made by North Quay Weymouth Limited against the decision of Weymouth & Portland Borough Council.
  - The application Ref WP/16/00745/OFF, dated 14 October 2016, was refused by notice dated 29 November 2016.
  - The development proposed is the change of use of the building from office (Use Class B1) use to a use falling within Use Class C3 (Dwellinghouse).
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the change of use of the building from office (Use Class B1) use to a use falling within Use Class C3 (Dwellinghouse) at land at Former Council Offices, North Quay, Weymouth, Dorset DT4 8TA in accordance with the terms of the application Ref WP/16/00745/OFF, dated 14 October 2016, and the plans submitted with it, and subject to the following conditions:
  1. No part of the building shall be occupied as a dwellinghouse until the vehicle and cycle parking facilities indicated on the submitted details have been provided as shown on the approved plans. Thereafter, these areas shall be retained, kept free from obstruction and be made available for the purposes specified.
  2. The development hereby permitted shall only be carried out in accordance with the submitted Flood Risk Assessment (West Dorset District Council and Weymouth & Portland Borough Council Shared Partnership, July 2014), and the Supplementary Flood Risk Assessment (M Frank Tyhurst, dated October 2016), and the proposed flood resilience measures shall be carried out prior to occupation of any of the dwellings hereby approved, and finished floor levels shall be set no lower than 3.38 metres above Ordnance Datum (AOD).

### Application for costs

2. An application for costs was made by North Quay Weymouth Limited against Weymouth & Portland Borough Council. This application will be the subject of a separate Decision.

## **Procedural matter**

3. The Council's letter of 29 November 2016 does not specifically refuse prior approval, but having regard to the provisions of paragraph W(3) of Part 3 of the Order, it is reasonable to treat the letter as a refusal of prior approval.

## **Main Issue**

4. Whether the proposal is permitted by the Order.

## **Reasons**

5. Class O applies to buildings in a use falling within Class B1(a) (offices) of the Schedule to the Town and Country Planning (Use Classes Order) 1987. Class B1(a) refers to use "as an office other than a use within class A2 (financial and professional services)". The Use Classes Order provides no further definition or interpretation of "use as an office".
6. The building in question is now vacant, but on the relevant day, 29 May 2013, it was in use by Weymouth and Portland Borough Council for the carrying out of local government functions. The Council argues that such use was not an "office use" but "use for the administration of local government", which it holds to be a sui generis use.
7. The office building was built in 1971 and occupies four floors, plus rooftop rooms containing plant, lift equipment and access to a water tower and telecommunications apparatus. The majority of the building comprises a mix of open-plan office space, with a variety of smaller or individual offices, used to accommodate the senior management of the Council. The offices were used to carry out many of the usual functions of a local authority including parking, housing benefits, legal, property, financial services, democratic services, economic and tourism development, human resources, planning, building control and environmental health departments.
8. The main entrance to the building is on the ground floor, which gives access to a reception area, the former cash office, some interview rooms, toilets and a waiting area. On the first floor are two Committee rooms, next to the Mayor's Parlour. These rooms have interconnecting folding doors which enabled them to be used flexibly. The Committee rooms have no special access arrangements or separate accommodation for the public or press. The appellants' undisputed figures are that 88.44% of the gross internal area (GIA) of the building was always closed to the public, and other than when the public were admitted to the committee rooms, 94.25% of the GIA was inaccessible.
9. Of particular relevance to this issue is the judgment of the Court of Appeal in a case<sup>1</sup> involving County Hall, the former offices of the Greater London Council, on the South Bank of the Thames. That case involved a determination as to whether or not use of County Hall as offices amounted to development. The Court held that an Inspector's finding that a change of use was involved was lawful (albeit that the decision was quashed for other reasons). That Court examined the 1987 Use Classes Order, and so the legal principles involved in that case are relevant to this.

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<sup>1</sup> *London Residuary Body v Secretary of State for the Environment* (1989) 3 PLR 105

10. The judgment of Slade LJ held that the use of premises for the purpose of administration would much more often than not constitute use as an “office” within the ordinary meaning of words and thus within the 1987 Order, and that the mere fact that a building is used for the purposes of government would not by itself render its use otherwise than as an “office”, indicating that the use of many, perhaps most, government ministry buildings would undoubtedly be as “an office”.
11. However, he found that, as a matter of fact and degree, the Inspector was entitled to find that the use of County Hall amounted to a sui generis use, rather than an office use, as a result of a combination of factors, and the special features which led to that conclusion included :
  - (a) The presence of a debating chamber with voting lobbies, press gallery and all the paraphernalia of party politics, a characteristic which permeated the Committee rooms;
  - (b) The significant degree of public involvement in and public access to the buildings;
  - (c) The use made of parts of the buildings for public meetings of voluntary and local organisations;
  - (d) The characteristics of public debate and decision making, administering services, responding to queries from the public, together with a range of other public and ceremonial activities.
12. Lloyd LJ for his part agreed with the submission that the touchstone of office use is administration, and said that “Since we are concerned with the nature of the use, and not the purpose of the user, it does not seem to make any difference whether the administration is business administration, government administration or any other kind of administration.” He went on to accept that the Inspector was entitled to find that the use of County Hall was sui generis, not because the primary or predominant use was “elected government use” but because the planning unit in that case should properly be regarded as having a mixed or composite use.
13. However, the judgment of Stocker LJ takes a different view on the relationship between the local government functions and the office activities, saying that “Without the local government functions the offices had no purpose to fulfil. The activities carried on in each of the offices were dictated by, and thus ancillary to, the decisions taken in the debating chamber and other committee chambers. Without those decisions, there was no function to be performed in the offices.” However, in my experience, this relationship has been altered in the years since County Hall was last used. Now many functions carried by local authorities are required to be undertaken under statutory powers, or under powers delegated to officers, and relatively few day to day administrative functions result from the decisions of elected members.
14. Bearing these “special features” in mind, it is relevant to compare County Hall with the Council offices in this case. The appellants’ uncontested evidence is that County Hall is a very large, Grade II listed building, which contained a large, and highly decorative Council Chamber, but that individual committees had their own dedicated committee rooms, at least one with a public gallery. It also hosted a members’ Reading Room, a library with a publicly available

collection and an Education Library. There were also dedicated rooms for party whips and party leaders, and a members' terrace and courtyard. Other facilities included a restaurant open to the general public, refreshment rooms, a staff chapel and (rather peculiarly by today's standards) a small firing range. It carried out the various administrative functions of the Greater London Council, the Inner London Education Authority, the London Fire and Civil Defence Authority and the London Waste Regulation Authority. Thus, a particular characteristic of County Hall was the extensive facilities for elected members, and a substantial degree of access by members of the public. Taking the four blocks that made up County Hall, office space constituted substantially more than 50% of the total floorspace.

15. In respect of the North Quay building, the Council has provided no evidence about the nature and extent of the use made of the building, despite the fact that the Council has the best knowledge of the use that was made of the building. What evidence exists is that provided by the appellants and from the facts referred to in counsels' opinion provided on behalf of the Council.
16. The original 1964 permission for the building described it as a "Civic Building and Library." Although it was originally intended that the North Quay offices would house the Council Chamber and Committees, the plans were amended to omit these and some other functions, including a library. The Council Chamber functions took place in the Guildhall in St Edmunds Street, an ornate building not far to the north of the appeal site, on the opposite side of the quay. Debating chambers, voting lobbies, press galleries, party rooms and publicly accessible rooms and services are largely absent here, and thus some of the key special features which led to the finding that County Hall was a sui generis use do not exist to anything like the same clear extent here.
17. I understand that the two, fairly small, committee rooms were used for meetings of the Planning Committee, Management Committee, Licensing Committee and Licensing Sub-Committee and Weymouth Harbour Board, to which the public were admitted. I have not been told of any use of the two committee rooms by voluntary or local organisations. However, some decision-taking functions of the Council took place within the building, and so applying the ratio of *Stocker LJ*, the office work involved in the administration of those decisions could be said to be ancillary to those functions.
18. In terms of use by the public, access was strictly controlled to the small, functional reception area, and I would envisage that access beyond that area was carefully supervised, and that public were "granted access" to Committee meetings. I understand from public representations that the Registrar's Office was at one time contained within the building, but at a date unknown to me, it was transferred to the Guildhall. There were no other facilities such as restaurants or libraries which were open to the public, or rooms where the public could observe the decision-making of local government. The percentage of office space in the North Quay building was substantially greater than that in the County Hall case.
19. Whilst there was a members' room and the Mayor's Parlour, these occupied a small part of the overall floorspace, and such political uses lack the range of accommodation related to political decision-making found in County Hall, such as voting lobbies, whips' offices, party leaders' offices and press gallery, a characteristic which was said to "permeate" the committee rooms. From what

I saw on my visit, even accounting for the fact that the committee rooms were bare, I consider that there was little to distinguish them from normal office meeting rooms, and the characteristic trappings of the workings of local democracy could not be said to “permeate” these rooms to any significant degree.

20. Both parties agree that the decision turns on matters of fact and degree and requires a planning judgement to be made. The Secretary of State’s decision in the County Hall case indicated that the decision (that its use was sui generis) was one which was arrived at on its own particular facts, and that the use of other local government offices may be different. In arriving at my decision I have drawn on my considerable experience in visiting local government offices.
21. Drawing all the strands together, I consider that the use of the North Quay premises presents few of the special features which led the Inspector to conclude that County Hall fell to be a sui generis use. When looked at in its entirety, the administrative functions carried out within the vast majority of the floorspace can be characterised as office use, and the use of the small amount of floorspace by the public and the carrying out of the democratic functions are insufficient to shift the balance from use as an office to a sui generis use.
22. The Council has previously regarded the building as being in Class B1(a), as that is how it described the existing use in the 2015 planning application<sup>2</sup> which led to planning permission being granted for the redevelopment of the site. It is also relevant that the Council’s current offices at South Walks House, Dorchester, which it shares with two other local authorities, were approved as Class B1(a) offices, and planning officers at the time indicated in the Committee report that the building could be occupied by any organisation that qualifies with the B1 use restriction, noting that it might be a public body.
23. Similarly, the Council occupies a building at The Mulberry Centre, which the planning officers’ report describes as providing a customer contact town centre location for Council services including accommodation for democratic meeting rooms, reception area, the Mayor’s office and some general office space, indicating that it would rehouse facilities previously provided in North Quay House. The planning application for that use described the proposed use as falling within Class B1(a).
24. The appellants also refer to a 2016 appeal decision<sup>3</sup> relating to Stratton House where the Inspector found that the use of offices formerly occupied by the Council in that case was in Class B1, as well as a number of decisions from other planning authorities around the country where Council offices have been held to be within Class B1(a).
25. On the face of it, these decisions weigh heavily in favour of the appellants’ case. However, in none of these cases was there any detailed consideration or dispute about the lawful planning use of the buildings, and there is no evidence in making findings that Council office use fell within Class B1(a) that the decision-makers had the County Hall decision in mind. This reduces the weight that I afford them, but they nevertheless reinforce my finding that this site has a lawful Class B1(a) use.

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<sup>2</sup> LPA Ref: WP/15/00031/OUT

<sup>3</sup> APP/F1230/W/15/3128727

26. I therefore conclude on the main issue that the proposal is one which is permitted by the Order.

**Other matters**

27. I have had regard to the representations from members of the public and others about the proposal. The matters which can be taken into account in determining a prior approval proposal are limited to those set out in paragraph O.2(1) of the Order, namely:
- (a) transport and highways impacts of the development,
  - (b) contamination risks on the site,
  - (c) flooding risks on the site, and
  - (d) impacts of noise from commercial premises on the intended occupiers of the development.
28. Many of the concerns from members of the public and the Weymouth Civic Society relate to the loss of an opportunity to provide a building more in keeping with the Weymouth townscape, and the conflict with the strategic vision for the town. Whilst I recognise the force of these concerns, they are not matters which I can take into account as they do not fall within the limited range of considerations set out above. For the same reason, concerns about the quality of the proposed accommodation and the possibility of the use of the proposed flats as second homes cannot influence my decision.
29. In respect of the proposed level of car parking, the Highway Authority has no objection in the light of the site's location close to shops and services, the railway station and bus routes, and there is insufficient reason for me to arrive at a contrary view. The site lies within the Weymouth Conservation Area. The proposal is solely for a change of use, and thus the proposal would leave the appearance of the building unchanged. There would therefore be no material impact of the proposal on the character and appearance of the Conservation Area.
30. I have had regard to a claim about public rights of way over the site. None are recorded on the County Council's map, but in any event, this determination does not affect others' rights. Concerns about the way in which a previous application for the site was dealt with are beyond my remit on this appeal.

**Conditions**

31. The Council has not suggested the imposition of any conditions. However, the Highway Authority and the Environment Agency have suggested conditions, which I have imposed in the interests of highway safety and minimising flood risk respectively.

**Conclusion**

32. For the reasons given above, I conclude that the appeal should be allowed.

*JP Roberts*

INSPECTOR