
Appeal Decision

Site visit made on 3 September 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Appeal Ref: APP/U5360/W/19/3232184
2A Greenwood Road, London E8 1AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O, Paragraph O.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Charlie Paton against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2019/0634, dated 11 February 2019, was refused by notice dated 9 April 2019.
 - The development proposed is the change of use of part of the ground floor from office (B1(a)) to residential (C3), providing a one bedroom flat.
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Decision

1. The appeal is dismissed.

Main Issue

2. The first, and in the event only, main issue in the appeal is whether the proposed development benefits from the permission conferred by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').

Reasons

3. Article 3(1) of the Order confers planning permission for the types of development set out in the Schedules to the Order, subject to complying with the conditions, restrictions and limitations therein. Part 3 of Schedule 2 to the Order concerns changes of use. Class O confers a permission to change the use of an office building (or part of a building that is used as an office) in class B1(a) of the Use Classes Order ('the UCO') to a residential dwelling falling within Class C3 of the UCO.
4. A number of conditions, limitations and restrictions apply.
 - (i) The first (for present purposes) is that a Class B1(a) use must have subsisted in the building (or relevant part thereof, if the building contains separate planning units) on 29 May 2013 ('the relevant date') or have been the last use of the building prior to that date: Paragraph O.1(b).

- (ii) The second is that the building (or the relevant part thereof) must be an existing office use in Class B1(a): Class O, description of permitted development.
 - (iii) The third is that, like any permission conferred by the Order, the existing use or operations must be lawful in order to benefit from the permission granted by the Order: article 3(5).
 - (iv) The fourth is that an application to the local planning authority must be made for a determination as to whether the authority's prior approval is required as to matters concerning transport and highways impacts, contamination and flooding risks, and the impacts of noise from commercial premises on the intended occupiers of the development: Paragraph O.2(1).
5. Although the application to the local authority requires only a determination as to the matters relating to transport and highways, contamination, flooding and noise, the Procedural section W of Schedule 2, Part 3 of the Order sets out that on such an application, the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with any relevant condition, limitation or restriction, or insufficient information has been provided to enable the authority to establish whether this is so. It is therefore appropriate first to consider whether there is sufficient information to establish that the proposed development complies with these conditions, limitations and restrictions.
6. The property, which now extends to 3 floors, was acquired by Lightworks Limited, a company of which the appellant is a Director, in 1984. The company's registered office is at the property. The nature of the company's business is described as the manufacture of optical precision instruments. The appellant explains that in 2000 he incorporated another company, Seawater Greenhouse Limited, also registering its office at the property. Its business is described as research and experimental development on natural sciences and engineering.
7. At the time of my site visit no business activity appeared to be taking place in the building, which was undergoing refurbishment. The ground floor is split into essentially 2 rooms. To the north is a long rectangular room described as the 'office' and which forms the subject of the present proposal. Barn doors provide a direct access to the street. An internal door links it to a smaller workshop room to the south, accessed from the street by a more conventional doorway and providing a staircase to the rooms above. Plans showing the pre-refurbishment layout show washroom facilities accessed from this room. Workshop equipment was present.
8. The staircase leads to 2 rooms above, which appeared to be office/study areas, and above that to a large greenhouse and outdoor terrace at the top of the building. I am informed that the appellant, a distinguished scientist and environmentalist, has in the past conducted research and experiments into the growing of tomatoes hydroponically in the greenhouse.
9. What is not explained in the appeal documentation is the extent to which the growing of tomatoes has related to the businesses of either Lightworks Limited or Seawater Greenhouse Limited, or the extent to which either company's non-office business activities have taken place within this building. The Council

state that in 2005 and 2006, the existing use of the whole premises was described as "B1, offices, research & development of products". It appears from the limited information before me that historically the building has been in a mix of related Class B1 uses all within a single unit of occupation in a building lacking distinctly separate areas. I am unable to conclude from the information provided that the building as a whole has historically been in a Class B1(a) use only.

10. I turn then to whether the relevant part of it has. In order for the appeal site (the long 'office' room) to take advantage of the permitted development rights conferred by the Order, it must have been in a Class B1(a) use at the relevant date. The Council consider that the building as a whole remains in a single planning unit in a mixed B1 use.
11. The appellant provides evidence of the appeal site having been leased out separately to other apparently unrelated (in a business sense) companies since 2011. An 'office space rental agreement' to Adam Lloyd Construction Limited was made on 1 October 2011, letting out what was described as "the office room on the ground floor, including the shared bathroom & kitchen on said property". Evidence of payments, although irregular and not always in the stated amount of £385 per month, has been provided covering the period of the relevant date in May 2013.
12. No plan is provided with that rental agreement, and it is not altogether clear how much of the space it related to. A supporting letter from one of the Directors of Adam Lloyd Construction refers to having rented only 3 desks, rather than the whole office to which the rental agreement appears to relate. A further letter from Entropea Labs Limited states that 30 sqm of desk space was rented from 2014 onwards, alongside the 3 desks of Adam Lloyd Construction. On balance however, and despite these apparent discrepancies, on the evidence of the rental agreement and the fact of occupation by Adam Lloyd Construction I accept that the appeal site was let out as unrelated office space from 2011 onwards.
13. A supporting statement from Wilton Studio refers to some office space having been let out between 2005 and 2010 to Wills Watson + Associates, a firm of product designers. However, no further details are given and this is not mentioned in the appellant's statutory declaration. I am therefore unpersuaded that the appeal site was let out as unrelated office space prior to 2011.
14. The internal door and the historic provision of washroom facilities in the 'workshop' space, together with the rather more cumbersome street access to the appeal site through the barn doors compared with the more conventional doorway from the workshop, are indicators that the 2 properties were not entirely divorced from each other even at this stage. I am persuaded that from 2011 the appeal site was itself a physically separate and distinct area, occupied for a substantially different and unrelated purpose. However, although the unrelated office users (Adam Lloyd Construction and, later, Entropea) appear to have had exclusive use of this office space, it is not clear that the original companies (Lightworks and Seawater Greenhouse) retained exclusive use of the remaining space.
15. A photograph of the office dating from August 2014 shows uncluttered desks and a refrigerator. The office appears from this to have had at least 'snacking'

facilities. However, I am not informed whether it had access to its own water supply or temperature control. It appears, from the plans and from the rental agreement, that washroom facilities were situated in the 'retained' part of the building and shared between all occupiers. No information about how staff or clients accessed the property, or which entrance was used for any postal deliveries, is given.

16. Thus I do not have sufficient information before me to conclude that the 'office' space was, although physically separate and distinct, physically self-contained to the degree that it provided all the office facilities needed and was thus a separate planning unit.
17. On this basis I am unable to conclude that the planning unit was subdivided, or that the appeal site was occupied for a separate use falling solely within Class B1(a) from that date. Therefore, in relation to the first issue identified in paragraph 4 above, I find that the appeal site was not in a Class B1(a) use on the relevant date but that the mix of B1 uses identified by the Council still pertained at that point to the building as a whole.
18. Although the premises were under refurbishment at the time of my site visit, it is not suggested that the refurbishment of the appeal site is at this stage for any purpose other than its pre-existing use. Therefore, in relation to the second issue identified in paragraph 4 above, I find that the appeal site remains in a Class B1, but not solely in a Class B1(a) use.
19. I turn then to the question of lawfulness as required by article 3(5) in order for permitted development rights to arise. If I am wrong on the above 2 points, and the planning unit was indeed sub-divided into 2 planning units in 2011 (one for Class B1(a) in the appeal site, and the other for the pre-existing B1 uses in the retained property) then it would be necessary to consider whether this change in itself required planning permission. No submissions or evidence as to whether the effect of this change (if, contrary to my conclusions on the existing available evidence, it was a change) was material have been provided.
20. The PPG advises¹ that planning permission may not be required to sub-divide a building where:
 - Sub-division does not involve physical works that amount to development;
 - The use of any newly formed units after a building has been sub-divided falls within the same use class as the building's existing primary use before it was sub-divided, or there is a permitted development right allowing the new use; and/or
 - The sub-division does not involve converting a single dwelling house to contain more than one residential unit.
21. Although all these strictures would, if the unit had been sub-divided, appear to have been met in this case, it does not automatically follow that the change would not have been material and that permission would not have been required. Without evidence to establish the position, I would be unable to conclude that a post-2011 Class B1(a) use of the office space would be lawful, or therefore to confirm that the proposed conversion would amount to permitted development.

¹ Paragraph: 013 Reference ID: 13-013-20140306

22. Therefore, in relation to the third issue identified in paragraph 4 above, I could not be satisfied that a Class B1(a) use would be lawful and therefore that the proposed development would benefit from the permission conferred by the Order.
23. For these reasons, the appeal is dismissed. It is unnecessary to consider the fourth element identified in paragraph 4 above, relating to the matters requiring a determination as to prior approval.
24. I note that planning permission has been granted in the past for a 'live/work' use of the building. I add only that my considerations have not extended to the merits of the proposal, but only to whether it has been established that permitted development rights apply.

Laura Renaudon

INSPECTOR