The Planning Inspectorate

Appeal Decision

Site visit made on 23 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/Y0435/W/19/3233359
Station House, MK Central, Eldar Gate, Milton Keynes MK9 1BB

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Permitted Development No 13 against the decision of Milton Keynes Council.
- The application Ref 19/01432/PANB1C, dated 16 June 2019, was refused by notice dated 16 July 2019.
- The development proposed is the conversion of part of the building from B1a Office to C3 (200 units).

Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the conversion of part of the building from B1a Office to C3 (200 units) at Station House, MK Central, Eldar Gate, Milton Keynes MK9 1BB in accordance with the details submitted pursuant to Schedule 2, Part 3, Class O of the GPDO through application Ref 19/01432/PANB1C, dated 16 June 2019 and subject to the conditions contained within the Schedule attached to this Decision.

Procedural Matters

2. A further appeal[1] has been submitted regarding the Council's recent decision to refuse prior approval for a very similar scheme on the appeal site[2]. However, given the early stages of the recent appeal submission and the advanced stage of the current appeal, I have proceeded to determine the current appeal.

Main Issues

3. The main issues are whether the proposal would be permitted development, and if so, its effect on transport and highway safety, contamination risk, flood risk and whether it would provide adequate living conditions for future occupants, with regard to noise.

[1] 3237753
[2] LPA Ref 19/01833/PANB1C

Reasons

Permitted Development

4. The Council does not dispute that the appeal building has been used for any other purpose than B1a use and as the site does not include any of the exemptions listed in (a)-(g) above, the site is considered to benefit from permitted development rights for the change of use from B1 office to C3 residential provided it complies with the conditions set out in paragraph O.2 of Class O, Part 3, Schedule 2 of the GPDO.

5. The appeal building comprises a large, multi-storey building. On the ground floor are various food and retail outlets as well as the entrance to Milton Keynes Central train station. The appeal concerns the first, second, third and fourth floor and therefore does not include the whole of the building. However, the GPDO defines a 'building' as '*including any structure or erection and, except in [Class F of Part 2, Classes P and PA of Part 3,Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, of Schedule 2] 5 , includes any part of a building…*'. Therefore, part of the building can be considered as a building in itself and a separate planning unit.

6. Whilst the overall building contains various uses, the ground floor, with its food, retail and train station uses, is distinctly separate to the office accommodation on the upper floors. I do not consider that these ground floor uses are incidental or ancillary to the upper floor office use, or vice versa. The uses are both physically separate and completely unrelated to each other. Therefore, having regard to the GPDO and case law referred to me[3], I am satisfied that the appeal site comprises a building and is a separate planning unit to others on the ground floor.

7. I have had regard to the planning history of the site, in particular the planning permissions granted in 2004[4] and 2019[5]. However, the details of these planning permissions, in particular the extent of the overall building that they related to, is not before me. In respect of the existing uses contained within the whole of the building, it would appear to fall within the scope of the 2004 permission. However, that is not to say that the separate uses permitted by the 2004 permission cannot fall into separate planning units.

8. Evidence has been provided regarding the use of units on the upper floor levels for uses other than B1 on 29 May 2013, including an art gallery and a charity. The evidence regarding 'Arts Central' indicates that in 2013 it was a 'project' or 'event', suggesting that it was a temporary use, with no evidence indicating how long it took place for in 2013. Similarly, the 'Festival of Nations' held in 2014 appears to have been a one-day event. Therefore, I am not satisfied that these events would amount to a material change of use of the unit from a B1 use. The article dated 4 March 2015 states that Arts Central MK has offices/studios, desks, rooms for meetings and workshops and rehearsal space. Therefore, based on the evidence before me, it is not clear what Arts Central comprised. Based on the description of its facilities, it is reasonable to conclude that it fell within a B1 use and the events referred to in 2013 and 2014 were merely ancillary and temporary to this use.

[3] Burdle and Williams v SSE and New Forest DC [1972] 1 WLR 1207101 . 391. The tests for determining the unit
[4] 04/02083/FUL
[5] 19/01362/FUL

9. I have also had regard to the use of a unit for 'Milton Keynes Women and Work'. It is clear that this provided training and educational courses. However, the evidence indicates that the courses primarily took place during a short period of time during the end of November/early December 2013. In the absence of any substantive information regarding what other activities Milton Keynes Women and Work provided, there is no evidence to indicate that these courses were not merely ancillary to a B1 use.

10. I find therefore, based on the evidence before me, on the balance of probabilities, the appeal building was in use as a B1 office use on 29 May 2013 and therefore satisfies paragraph O.1 of the GPDO. Consequently, the proposal is permitted development.

Transport and highway safety, contamination risk, flood risk and noise

11. The appellant has submitted with the appeal a Transport Assessment dated May 2019, prepared by Ardent Consulting Engineers; a Flood Risk Assessment; and a Noise Survey & Assessment dated April 2019, prepared by Philip Acoustics Ltd.

12. The Council has had the opportunity to comment on these documents but has not done so. Therefore, based on my own observations on site and in the absence of any evidence to the contrary, I find no reason to dispute the findings in each of these documents. Consequently, I find that the proposal would not have any unacceptable impact on transport and highways, contamination risks or flood risk.

13. Furthermore, it would provide adequate living conditions for future residents with regards to noise from the nearby commercial premises. I have had regard to the proximity of the site to the railway. However, whilst customers pay to use the railway, it forms part of the overall transport network, and therefore I do not consider that it is a commercial premises as envisaged by the GPDO and therefore should not be taken into account.

14. I have not been presented with a contamination risk assessment. However, the Planning Justification Statement, dated November 2018, prepared by Bidwells confirms that the existing use of the building does not hold any contamination risks and the proposed change of use would not involve any groundworks. In the absence of any substantive evidence to the contrary, I am satisfied that the proposal would not have any significant effect on contamination risks.

15. I find therefore that, based on the evidence before me, the proposal would not have any significantly harmful effect on transport and highway safety, contamination risk or flood risk and would provide adequate living conditions for future occupants, with regard to noise.

Condtions

16. I have considered the conditions suggested by the Council, having regard to the six tests set out in the National Planning Policy Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.

17. I have had regard to the suggested condition regarding a noise assessment. However, a noise assessment has already been undertaken and I find no reasons to conclude other than in accordance with its findings. Nevertheless, a

condition is necessary requiring that the scheme for noise insulation measures as set out in the noise survey and assessment are implemented.

18. In the interests of promoting sustainable forms of transport, a condition is necessary regarding bicycle parking.

19. In the interests of public health, a condition is necessary regarding a land contamination study. For this reason it is essential that this is a pre-commencement condition.

20. In the interests of highway safety, a condition is necessary regarding car parking provision. I note that the suggested condition refers to the car parking as shown on the approved plans. However, no such parking is indicated on the plans before me. Nevertheless, I am satisfied that such a plan could be submitted and details approved pertaining to this matter via a condition.

21. In the interests of the amenities of the occupants of neighbouring properties, a condition is necessary regarding waste management.

Conclusion

22. For the reasons given above, I find that the proposed change of use is permitted development under Class O and as such, having considered all matters raised, the appeal is allowed and approval granted.

Alexander Walker

INSPECTOR

Schedule of Conditions

1) The development hereby permitted must be completed within a period of three years from the date of this decision.

2) Prior to the first occupation of the hereby approved development, the Scheme for Noise Insulation Measures as set out in the Noise Survey & Assessment dated April 2019, prepared by Philip Acoustics Ltd. shall be fully implemented and the measures shall be retained as such thereafter.

3) Prior to the first occupation of the hereby approved development, details of the proposed secure and covered bicycle parking shall be submitted to and approved in writing by the local planning authority and the scheme approved shall be provided and retained as such thereafter.

4) Prior to the first occupation of the hereby approved development, details of the proposed car parking shall be submitted to and approved in writing by the local planning authority and the approved scheme shall be provided and retained as such thereafter.

5) Prior to any development taking place, the developer shall carry out an assessment of ground conditions to determine the likelihood of any ground, groundwater or gas contamination of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use, shall be submitted to and

approved in writing by the local planning authority before construction works commence.

Any remedial works shall be carried out in accordance with the approved strategy and validated by submission of an appropriate verification report prior to the first occupation of the development.

Should any unforeseen contamination be encountered, the local planning authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination will also be carried out to the written satisfaction of the Local Planning Authority.

6) Prior to the first occupation of the hereby approved development, a waste management plan shall have been submitted to and approved in writing by the local planning authority. The operation of the development shall thereafter be carried out in full accordance with the approved waste management plan.