



Appeal Decision

Site visit made on 20 September 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 4 November 2019

Appeal Ref: APP/N5090/W/19/3231376

226B Woodhouse Road N12 0RS

- 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 GPDO).
 - The appeal is made by Mr M Afxentiou against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/0820/PNO, dated 8 February 2019, was refused by notice dated 10 April 2019.
 - The development proposed is prior approval for change of use from Class B1 (Office) to Class C3 (Residential).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M Afxentiou against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether or not the appeal proposal is permitted development under the GPDO, and in particular whether or not the building was used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order¹ on 29 May 2013 (the relevant date) or, if not in use on that date, whether its last use before that date was as such.

Reasons

4. The appeal property was granted planning permission for change of use to Class B1 (Office) on 5 November 2009².
5. I have seen a statutory declaration by the appellant to the effect that he employed Henleys Estates in 2010 to rent the property as an office, and further that he entered into a business tenancy agreement on 24 December 2010 with Mr Karakoc for use of the property as such. The agreement was attached as an annex to the declaration. While the agreement does not explicitly state that the property should be used as an office, it does clearly relate to business use and is of the type that could be used for leasing an office unit.

¹ Town and Country Planning (Use Classes) Order 1987, as amended.

² F/03292/09

6. I have also seen a statutory declaration by Mr Karakoc that he used the property as an office for an Ebay business for the duration of the tenancy, starting within 2 weeks of signing on 24 December 2010 and ending on 11 November 2013. The declaration states that Mr Karakoc originally used the property solely as an office and then started to use the property for mixed residential and office use.
7. The statutory declarations were solemnly made under the Statutory Declarations Act 1835, and together with the associated business tenancy agreement, I give the evidence significant weight. I am satisfied that planning permission for change of use to Class B1 (Office) was implemented.
8. The Council conducted an enforcement investigation³ in June 2012 as regards unauthorised use of the premises as a residential unit. Further, the Council says that, in 2013 (date unspecified) there was dialogue between the managing agent and its enforcement officer in which it was requested that a shower unit, oven and washing machine were removed from the property in accordance with an enforcement notice.
9. Mr Karakoc does not state in his declaration when during the tenancy he started to use the appeal property for mixed use, only that he did so. The Council's enforcement interventions in 2012 and 2013, in conjunction with Mr Karakoc's declaration, satisfy me that residential use was occurring at those times.
10. The Council has not provided a date in 2013 detailing when the request to the managing agent was made. It is also not indicated in the appeal papers if a site visit was subsequently made to confirm the removal of the facilities or whether otherwise the Council was satisfied that the request had been actioned. However, the appeal papers do refer to a site visit made in 2015 when the building was vacant. A full kitchen was evident including fridge/freezer, oven and hob, microwave oven and freestanding washing machine. In addition, the bathroom suite included a shower, toilet and wash basin. This suggests that the last use before becoming vacant was residential.
11. Taking all into account, I am satisfied on the balance of probabilities that the appeal property was not used solely for office use on 29 May 2013.

Conclusion

12. For the above reasons, I conclude that the appeal proposal is not permitted development under the GPDO since the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order on 29 May 2013. Accordingly, the appeal is dismissed.

Andrew Walker

INSPECTOR

³ ENF/00649/12