



Appeal Decision

Site visit made on 17 October 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/N5660/W/19/3229410

2-12 Ernest Avenue, West Norwood, London SE27 0DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Counterpoint Properties Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/05482/P30, dated 20 December 2018, was refused by notice dated 14 February 2019.
 - The development proposed is the change of use from Offices (Use Class B1(a)) to 4 Residential Units (Use Class C3).
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO') to change the use of first floor offices at 2-12 Ernest Avenue, West Norwood, London SE27 0DA to 4 residential units in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph O.2(1) of the GPDO under application Ref 18/05482/P30 dated 20 December 2018. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph O.2(2) of Schedule 2, Part 3 of the GPDO and subject to the following additional conditions:
 - 1) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the remediation strategy detailing how this unsuspected contamination will be dealt with. The amended strategy shall thereafter be carried out as approved.
 - 2) The residential units shall not be brought into use until a post-installation noise assessment has been carried out, and submitted to and approved in writing by the local planning authority, to confirm that the external noise intrusion levels are such that the levels within each of the residential units are below the threshold values presented in BS 8233:2014 and the WHO Guidelines.
 - 3) The residential units shall not be brought into use until arrangements for cycle and refuse storage have been submitted to and approved in writing by

the local planning authority, and provided in accordance with the details approved. They shall thereafter be kept available for those purposes.

Main Issues

2. Previous applications for prior approval for a change of use to residential purposes have been refused by the Council for reasons including the technical details of those matters requiring prior approval. Further information has been supplied and the current application was refused on the sole ground that it did not benefit from the relevant permission conferred by the GPDO, because the Council do not consider that the appeal site has been in use as offices falling within Class B1(a) of the Use Classes Order. Accordingly, whether the use of the appeal site falls within Class B1(a), and has done so since the relevant date of 29 May 2013, is the main issue in the appeal.

Reasons

3. The appeal site comprises the first floor offices of Thermofrost Cryo Limited ('Thermofrost'), who have occupied the site since 1989 with a planning history of the site dating back to 1971. Originally, a factory was permitted with ancillary office and storage accommodation. Having acquired the site in 1989, Thermofrost obtained permission for an extension to the building for Class B1 purposes, which was said by the Council in January 1991 to have been the authorised use of the existing building (perhaps referable to the earlier permissions for a 'factory' and an 'industrial building' which depending on the circumstances may have fallen within what is now Class B1).
4. The appeal site forms only part of the existing building: the office section on the first floor, although also retaining the existing ground floor entrance at Ernest Avenue. At the time of my site visit the building as a whole appeared to be in 2 distinct parts. From the entrance at Ernest Avenue into a small reception area, stairs lead up to a largely open plan office on the first floor. Some half-windowed office cubicles lie off to the sides. A small kitchenette and washroom facilities lie at the eastern end. The offices were in active use at the time of my visit.
5. As well as the main stairs from the ground floor reception area to the east, a second set of stairs, apparently designed for emergency use, descend from the northern side of the first floor. These emerge into the loading and car parking area outside to the rear of the building at ground floor.
6. The ground floor of the building was not in active use at the time of my visit. It was laid out as a warehouse, with a separate entrance and trade counter to the north. A forklift truck was in situ, as were several large shelving units. Separate kitchen and washroom facilities, and a small restroom, are found to the eastern end of the ground floor. A staircase to the western end leads up to a mezzanine floor laid out with storage shelving.
7. The two parts of the building do interconnect. The warehouse can be accessed through a door leading from the ground floor reception area to the eastern end. Another connecting door lies at the base of the emergency staircase. The warehouse is accessed externally from the door at the trade counter, the door to the base of the emergency staircase, and by 3 large loading bay roller shutter doors. The door to the base of the staircase has a 'passcode' facility

- and appears as the most obvious staff entrance to the warehouse from the car parking area, accessed from Beadman Street to the west.
8. Each of the parties to the appeal bases its case on the use of the building as a whole. The Council refers to the historic permissions and correspondence, and considers that there is insufficient evidence to conclude that the building has been in an exclusively class B1(a) use, as is required, rather than a more general class B1 use. The appellants refer to the Council's 1991 correspondence and consider that the principal use of the building has historically (during the period of Thermofrost's occupation) been a class B1(a) use, with the other aspects ancillary to this, and with the historic industrial permissions of the 1970's having 'fallen away'.
 9. I do not agree with either party on this issue. I consider, having regard to my observations on site and the correspondence and statutory declarations before me, that the existing building is comprised of 2 separate planning units, with the appeal site (the first floor offices and ground floor entrance to Ernest Avenue) constituting one of these.
 10. Victoria D'Cruz, a Director of Thermofrost since 1991, sets out that the first floor offices have been used as the head office functions of the company, from her own knowledge since 1991 and, to the best of her knowledge, since 1989. Leonard Fiddler states that the ground floor was, from 1989 to 2017, used for loading/unloading, trade counter, product storage, warranty returns processing and further office operations. Andrew Selby states the same for the period between 1989 and 2008. The head office functions of the first floor are said to have included sales, marketing, sales order processing, operations management, logistics management, accounts, engineering and technical departments.
 11. The company is said to have further offices in Manchester and Birmingham, with its business purposes being the sales and distribution of refrigeration and air conditioning equipment, components, parts and ancillaries.
 12. The building as a whole has plainly lain within a single unit of occupation since 1989, and since 1993 when property alterations had taken place. The question arising from the *Burdle* line of cases (*Burdle v Secretary of State for the Environment* 1972 1 WLR 1207) is whether, within this unit of occupation, there have been physically separate and distinct areas occupied for substantially different and unrelated purposes.
 13. On balance, having regard to the evidence before me, I conclude that this was so. The first floor head office and the ground floor 'warehouse' have been co-located within the same building, rather than amounting to a composite use or a building comprising a single main purpose to which secondary activities are incidental or ancillary. Whereas the ground floor appears to have been used primarily for storage and distribution, the first floor has been put to a straightforward office use, as detailed in the supporting statutory declarations. Although the parts of the building are interconnected, the separate staff facilities and different staff entrances to the 2 parts reinforce my impression of 2 separate planning units.
 14. I therefore find that the appeal site comprising the first floor offices was in a Class B1(a) use at the time of my site visit.

15. Turning to whether this was also the case on the relevant date of 29 May 2013, nothing in the evidence before me suggests that there has been any significant change to the way the building has operated during the last few years, save for the recent cessation of the warehouse use. I therefore conclude that the appeal site was in a Class B1(a) use at the relevant date.
16. Article 3(5) of the GPDO provides that any permission conferred by Schedule 2 does not arise in the case of permissions granted in connection with an existing use if that use is unlawful. Given the passage of time since the B1(a) use of the first floor was established, I am content that the permission conferred by Class O is not precluded by article 3(5). Therefore I conclude that the permission conferred by Class O of the GPDO arises in this case, subject to the detailed matters requiring a determination as to prior approval.
17. Those matters concern the transport and highway impacts of the development, contamination risks, flooding risks, and the impacts of noise from commercial premises on the intended occupiers of the development. Subject to securing appropriate planning conditions and obligations, the Council considers that these matters can be satisfactorily dealt with and I do not disagree.

Conditions and planning obligation

18. The Council have proposed 3 additional conditions, dealing with previously unidentified contamination, noise, and parking restrictions. I have imposed the contamination condition, although with amendments to ensure that any amended scheme is carried through. The appellants queried the precision of the proposed noise condition, and accordingly I have reworded this to reflect the BS 8233:2014 thresholds and WHO Guidelines set out in the acoustical report.
19. The appellants have subsequently submitted a planning obligation restricting the disposal or occupation of the units so that occupiers would not be entitled to residents' parking permits or contractual parking arrangements with the Council if controlled parking measures are put in place. The Council have not commented on this obligation, which meets the objectives of the condition proposed by the Council.
20. The Council's officer report on the application also referred to the proposed cycle storage and waste storage and the need to secure details by condition, in the interests of transport and highways. I agree that such conditions are necessary and so impose a condition to require the details of those arrangements to be secured before the residential units are brought into occupation.
21. Paragraph W(12) of Part 3 to Schedule 2 of the GPDO provides that the development must be carried out in accordance with the details approved, and accordingly I do not consider that a further condition expressly requiring compliance with the application plans is necessary, as this requirement is already incorporated by way of that paragraph and the terms in which prior approval is given above.

Conclusion

22. For the above reasons I consider the appeal site meets the requirements of the GPDO to have been in a lawful Class B1(a) use since the relevant date, and accordingly benefits from the relevant permission conferred by Class O. Subject

to the conditions imposed, the matters requiring prior approval can be satisfactorily achieved and accordingly prior approval is given.

Laura Renaudon

INSPECTOR