



Appeal Decision

Site visit made on 22 October 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/W2465/W/19/3235055
80 Wharf Street South, Leicester, LE1 2AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Naif Silk Palace LLC against the decision of Leicester City Council.
 - The application Ref 20191186, dated 17 June 2019, was refused by notice dated 31 July 2019.
 - The development proposed is notification of proposed change of use from offices (Class B1(a)) to 76 studio flats (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address given on the application form did not include reference to the site's location within Leicester. For clarity, I have therefore taken the address from the appeal form as this is more precise.
3. The description of development given on the application form is detailed. It describes the nature of the proposal as well as the location of the site with regard to public transport, parking and bicycle provision, as well as an assessment of the proposal with regard to contamination, flood risk and noise. In the header above, I have therefore used the description given on the appeal form and on the Council's decision notice as this is more precise.
4. The appellant submitted amended plans with the appeal. They revise the proposal by altering the red line boundary to omit the electricity transformer and the forecourt that are not within the appellant's ownership. It therefore encloses a smaller area of land than originally submitted. Furthermore, the substation does not form part of the appeal proposal and it is retained as existing. I acknowledge that the forecourt is shown as a parking area and I will return to the implications of this later in my decision. Nevertheless, I am satisfied that the amendments would not prejudice interested parties. I have therefore accepted the amended plans and decided the appeal on this basis.

Main Issue

5. The main issue is whether the proposal satisfies the requirements of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) with

regard to being permitted development from office (Use Class B1(a)) to residential (Use Class C3).

Reasons

6. Class O of the GPDO states that development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted development, provided that the criteria set out within paragraph O.1 are met.
7. Paragraph O.1(b) confirms that development is not permitted by Class O if the building was not used for a use falling within Class B1(a) (offices) either (i) on 29 May 2013 or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
8. The application for prior approval for the proposed change of use of the building from Class B1(a) to 76 studio flats (Class C3) was refused by the Council for the reason that it considered that the property did not have a B1(a) use on or before the relevant date so that it would not be permitted development.
9. The appeal site at 80 Wharf Street South lies on the corner with Fleet Street, close to the city centre. It comprises a traditional three-storey building with prominent side gables fronting Wharf Street South, to the rear of which is a long flat roof two-storey projection, as well as a part-single, part two-storey flat roof structure built around the substation and recessed from Wharf Street South by a forecourt. Whilst the buildings across the site differ in appearance, I have nothing before me to indicate that they have been divided into separate planning units. I have therefore considered them as a single building.
10. The appellant's evidence states that prior and during 29 May 2013, the building was used as Class B1(a) offices. For the purposes of Class O, the change of use to dwellinghouses will only be permitted development if the building was actually and lawfully used as offices on that date, or when it was last in use in the case of a building which was in use before that date but not on it.
11. The site has an extensive planning history. The Council's Officer Report, upon which the appellant has had the opportunity to comment, records reference to an 1886 map showing a boot and shoe factory along the northern side of the site, which may have been within the building that presently exists. It also lists a series of applications between circa 1961 and 1990. These cite a variety of uses, including club premises, concert hall/room, footwear manufacturing and restaurant. An application in 1990¹ does refer to a 'new entrance to first floor offices from Fleet Street', but I understand that the plans show the ground floor as a concert hall and part of the first floor as a conference room. These do not confirm the use of the building to fall within Class B1(a).
12. The Council's Officer Report also details the 'current use(s)' given on the application forms submitted with more recent planning submissions on the site between 2007 and 2019². In 2007, it was described as 'commercial'. By 2017, it was identified to be vacant and last used for offices, wedding hall and retail.

¹ Council Ref: 19900110

² Council Refs: 20072342, 20172259 and 20190380

13. The application form for the 2019 submission also recorded the building to be vacant, noting that it was last used for offices, wedding venue, pool hall and retail and that these last uses had ceased on 29 July 2012. I understand that the Planning Statement submitted with it also referred to the site comprising a former D1 banquet hall, bars and a 3-storey Victorian factory that has been used as a snooker hall.
14. At the time of my visit, the building was vacant, but I observed the retained 'Starlite 2001' sign on the Fleet Street elevation citing weddings, parties, dancing, conferences, stage shows and exhibitions. I also saw signs to 'The City Suite', citing these and similar uses. Furthermore, the existing plans submitted with the appeal proposal show some rooms as offices but also refer to workshop/training space and store.
15. I have considered the supporting evidence provided by the appellant. The commercial lease agreement with a tenant dated 5 June 2012 does define the 'premises' to mean the office space at 80 Wharf Street South. The extract from Companies House refers to the same tenant. Their company was incorporated on 15 May 2012 and dissolved on 24 December 2013 and the appeal site was their registered office and correspondence address. However, a letter from the tenant dated 5 August 2019 sets out that during the time they occupied the building, it was used to make and receive telephone calls, host meetings and workshops to assist members of their community to find work. This does not, in my view, confirm the use of the site to fall within Use Class B1(a). The holding of meetings and workshops in particular would be more akin to a non-residential institution within Use Class D1, as an education and training facility.
16. I appreciate that the 'street view' screen shot dated October 2012 provided by the appellant shows a handmade sign referring to the tenant, placed in a window on the Fleet Street elevation of the site. The sign does not, however, refer to the use of the building as offices within Use Class B1(a). In any event, how the building was used does not, in itself, alter its lawful use.
17. On the evidence available to me, it has not been demonstrated that the building was in B1(a) office use on 29 May 2013 nor in Class B1(a) use on the day it was last in use prior to that date. I therefore conclude that the proposed change of use would not meet the requirements of the 2015 GPDO for it to be considered as permitted development under the provisions of Class O of Schedule 2, Part 3 of the Order in respect of a change from B1(a) use to a use falling within Class C3 (dwellinghouses).

Other Matters

18. As I have concluded that the proposed change of use is not permitted development, a determination in respect of paragraph O.1(d)-(g) in respect of whether the site is subject to specific designations (safety hazard area, military explosives storage area, listed building or its curtilage or a schedule monument) is not required. It is also not necessary to determine whether prior approval is required in respect of the conditions under paragraph O.2, namely (a) transport and highways impacts, (b) contamination risks, (c) flooding risks and (d) the impact of noise from commercial premises on intended occupiers.
19. I acknowledge that in respect of O.2(a), the amended red line plan omits the forecourt from the appeal site. This area was originally shown to provide parking associated with the proposal. If I had been allowing the appeal, it

would have been necessary to seek the views of the parties on this amendment. However, as I have concluded that the proposal is not permitted development, I have not pursued this matter further. For the reasons already set out, the proposal could not be considered as permitted development for assessment under the prior approval process.

20. The appellant has referred to the Council's processing of the original application in not requesting any additional evidence as part of the application submission. However, in my determination of this appeal, I must have regard only to the planning merits of the case before me.

Conclusion

21. As a consequence of my findings, I conclude that the proposed change of use does not comply with the requirements of Schedule 2, Part 3, Class O of the GPDO in that it cannot be established that the building was in use as Class B1(a) offices on 29 May 2013, nor in Class B1(a) use on the day it was last in use before that date. Therefore, the proposed change of use to Class C3 dwellinghouses is not permitted development and so this appeal cannot succeed.

22. For these reasons, the appeal is dismissed.

Kate Mansell

INSPECTOR

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