



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/19/3235044

176-180 Loughborough Road, Leicester LE4 5LF

- 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 Darul Uloom Leicester against the decision of Leicester City Council.
 - The application Ref 20191164, dated 19 June 2019, was refused by notice dated 9 August 2019.
 - The development proposed is notification of change of use from offices (Class B1(a)) to 17 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 on the application form is detailed. It describes the nature of the proposal and also sets out the location of the site with regard to public transport, parking and bicycle provision and an assessment of the proposal with regard to contamination and flood risk. 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.

Main Issue

4. The main issue is whether the proposal satisfies the requirements of the provisions 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

5. Schedule 2, Part 3, 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.
6. Paragraph O.1(b) states 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.
7. Situated on the corner of Loughborough Road and Holden Street, the appeal site was initially built as a Police Station. The original part of the building is constructed in stone and consists of a single storey central section with two-storey wings to each side. These incorporate sash windows and distinctive chimney stacks. To the rear, fronting Holden Street, there is a modern flat roof brick extension with roller shutter door.
 8. The application form states that on 29 May 2013, the property was in office use associated with a school that is situated opposite the appeal site. For the purposes of Class O, the change of use from an office to a dwellinghouse will only be permitted development if the building was actually and lawfully used as an office on that date, or before when last in use if not in use on that date.
 9. The planning history before me indicates two historic applications in 1982 and 2002. The former related to a change of use from storage and distribution to vehicle servicing and the latter from warehousing to student accommodation. The appellants confirm that they secured the 2002 permission, which was granted in January 2003¹.
 10. Neither of these permissions were evidently implemented. Nevertheless, they both refer to a change of use of the building from warehouse and from storage and distribution respectively. I am also mindful that for business rates purposes, it is listed as a 'warehouse and premises'. Such a use would fall within Use Class B8 rather than B1(a). Furthermore, the modern addition to the rear, which is a large space serviced by a roller shutter, is also, to my mind, more indicative of a storage/warehouse use within Use Class B8.
 11. I have had regard to the supporting evidence provided by the appellants. This includes a letter seeking a quotation for roof repairs to the building dated 3 April 2013 and a water bill relating to the appeal site dated 10 May 2013. However, neither refer specifically to its use as offices and they do not confirm the use of the building.
 12. A letter from the appellants, addressed from their premises at 119 Loughborough Road, also states that the appeal premises were occupied by them as offices before and up to 29 May 2013 for business management and for everyday administration and office use. However, the Council's Officer Report, upon which the appellants have had the opportunity to comment, refers to 'street view' photographs from October 2012 and September 2014, which show that at least some of the windows to the building were boarded up, and mainly the same windows. It would not be unreasonable to assume that consequently, the whole of the building was not in office use within that period.
 13. Moreover, on my site visit, which included an inspection of the interior of the building, I observed that it was vacant and in a poor state of repair. Some windows were still covered, and floorboards were missing in places. I agree with the Council that its condition is indicative of many years of vacancy. There was also no indication of office use. Some of the rooms were empty whilst others were used for the storage of various items.

¹ Council Ref: 20021590

14. From the evidence before me, I therefore consider that the planning history defines the lawful use of the building as storage and distribution/warehouse within Use Class B8. Even taking into account current and earlier (1995) versions of the GPDO and recognising that permitted development exists for a change of use from B8 to B1 subject to conditions, up until the relevant date of 29 May 2013 it would have applied to a maximum of 235m² and not to the entire building, which is larger. In any event, I have nothing before me, such as a Certificate of Lawful Use, to indicate that any such change occurred.
15. Consequently, it has not been demonstrated 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 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

16. I have taken account of all the matters raised in the evidence. There is no dispute between the parties that criteria (d)-(g) of paragraph O.1, with regard to safety hazard areas, military explosives storage areas, listed buildings their curtilage or scheduled monuments, do not apply. The parties also agree that having regard to Paragraph O.2 (b)(c) and (d), there would be no unacceptable contamination or flooding risks nor impacts of noise from commercial premises nearby. From the evidence before me, I have no reason to come to an alternative view on these matters. The Council do identify a concern in relation to O.2(a) relating to the transport and highway impacts of the development. However, in light of my conclusion that it is not permitted development as a result of the proposal's failure to meet the criteria set out in the 2015 GPDO above, no further consideration of this matters is necessary. For the reasons already set out, the proposal could not be considered as permitted development for assessment under the prior approval process.
17. The appellant has referred to the Council's processing of the original application in seeking to work proactively to ask if any further information was required. However, in my determination of this appeal, I must have regard only to the planning merits of the case before me.

Conclusion

18. 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 all of 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.
19. For these reasons, the appeal is dismissed.

Kate Mansell

INSPECTOR