



Appeal Decision

Site visit made on 6 January 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal Ref: APP/B0230/W/19/3238985

1 Finway, Luton LU1 1TR

- 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 Cresta Enterprises Ltd against the decision of Luton Council.
 - The application Ref 19/00270/COM, dated 25 February 2019, was refused by notice dated 9 May 2019.
 - The development proposed is the change of use of the existing office building into fifteen self-contained residential units (9 x studio units & 6 x 1-bed units) Provision of sixteen on-site car parking space.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would be permitted development, having regard to Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Reasons

3. The appeal building is the subject of an extensive planning history. Most notably, in 1991¹ planning permission was granted for the erection of a replacement office and retail sales area. This permission was subject to a condition (condition no. 4), which states '*The development hereby permitted shall only be used in association with the main use of the building for storage and distribution of computer goods and not more than 120m² of gross floorspace within the building shall be used for the purposes of a reception and/or showroom area for members of the public calling at the premises.*'
4. This condition effectively ensured that the use of the building was for the storage and distribution of computer goods (the main use) and any office or retail uses were ancillary to this main use, to prevent retail development in this area, as indicated in the reason for the condition. I note the appellant's argument that the condition should refer to specific permitted development rights if it seeks to restrict them and therefore is not valid. However, the

¹ LPA Ref 91/00361FUL

- condition remains extant and there is no evidence before me of any application made to remove it. Accordingly, I attribute this argument very limited weight.
5. The appellant confirms that since 2007 the building has been used for warehousing to the rear and offices to the front by different parties. The appellant states that this is supported by the Council's revenue team, although no evidence of this is before me. I note that the Council's Officer report for the subject proposal states that '*The Revenues team has also confirmed that the office building was initially subdivided in October 2016 and has again been divided on three more occasions in January, May and finally July 2017 to create a total of five units*', which suggests that a change in the use of the building to B1 use, took place much later than 2007, albeit I accept that that is when Watford Electronics ceased operating from the site.
 6. Whilst it seems that numerous businesses have operated from within the front element of the site since 2007, there is no substantive evidence to indicate that they have been B1 uses or that they have been operating continuously for the ten-year period of immunity from enforcement action to be instigated. I must note that at the time of my site visit there did appear to be at least one B1 use business in operation. However, there was also what appeared to be a form of residential development on the second floor, which comprised a bedroom, bathroom, kitchen and lounge area, which is not indicated on the drawings submitted with the proposal. This raises further doubt regarding the uses that have taken place within the building over the last 10 years.
 7. The appellant also refers to correspondence from the Council's Planning Enforcement section², which states that they do not consider that it is expedient to take formal enforcement action. The same correspondence also states that '*the arrangement is currently in breach of planning control*'. There is no justification provided as to why the Council officer did not consider it expedient to take formal enforcement action, despite a breach of planning control occurring. In any event, informal comments made by a Council officer are not binding upon the Council.
 8. On the basis of the evidence before me, insufficient evidence has been provided to demonstrate that, on the balance of probability, the appeal site was lawfully in B1 use on 29th May 2013 or when it was last in use before this date. I conclude therefore that the proposal would not comply with the express terms of permitted development set out in Schedule 2, Part 3, Class O of the GPDO. It is therefore not permitted development.
 9. Given my conclusion above, there is no need for me to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

10. For the reasons given above, the appeal is dismissed.

Alexander Walker

INSPECTOR

² Appendix E of appellant's Grounds of Appeal