
Appeal Decision

Site visit made on 27 January 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/N1730/X/19/3230608
106-108 Fleet Road, Fleet GU51 4PA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Macedo against the decision of Hart District Council.
 - The application Ref 18/02489/LDC, dated 31 October 2018, was refused by notice dated 14 January 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is 'proposed change of use of the first floor from Class A2 to two flats'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of the proposal from the Council's decision notice as no description was given on the application form itself and the wording used reflects the wording in the appellant's covering letter. That said, based on the representations made, it would appear that the resultant change of use intended would be a mixed use comprising of Class A2 (of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO)) use at ground floor level, and two flats at first floor.
3. The application form refers to the applicant as 'Macedo' as stated in my banner heading above. The covering letter from the appellant states though that the application is made on behalf of Avakas Developments Ltd.

Main Issue

4. The main issue is whether the decision of the Council to refuse a certificate of lawful use or development was well founded. This will turn on whether the change of use would be granted planning permission by Article 3 and Schedule 2, Part 3, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

Reasons

5. The appellant considers that the proposed change of use is permitted development (PD) under Schedule 2, Part 3, Class G of the GPDO. The onus is on the appellant to make their case on the balance of probabilities.

6. Class G sets out a list of changes of use of a building which represent PD under this class. The appellant submits that the proposed change would fall under Class G(c): from a use for any purpose within Class A2 of the UCO (financial and professional services) to a mixed use for any purposes within Class A2 of the UCO and up to two flats.
7. The Council contends that, as the building has a display window at ground floor level, Class G(c) is not available in respect of this building. It submits that the applicable category under this Class would be G(d). The G(d) category of PD states that where a building has a display window at ground floor level, a change of use from any purpose within Class A2 of the UCO to a mixed use for any purposes within *Class A1* [my emphasis] of the UCO (shops) and up to two flats is PD. The proposed use would not fall into this category as the proposed mixed use would comprise of *Class A2* and two flats.
8. The Council suggests that this is essentially an 'intentional qualifying criterion' in order to protect ground floor high street units with display windows for A1 use. However, looking at the wording and structure of the Class G PD rights, it seems to me that Class G(a) to (e) sets out the separate categories of PD which are available under this Class. Paragraph G.1 then sets out the conditions applicable to these categories of PD. There is nothing in G(c) or in the G.1 conditions which suggests that this category of PD is not available where the building has a display window.
9. However, there is no evidence before me to suggest that the building has been in actual A2 use and my observations at my site visit indicated that it was vacant. Consequently, the appellant has not persuaded me on the balance of probabilities that the proposed change of use would fall under Class G(c), since there would not be a change of use from an actual A2 use. As such, the proposed change of use would not be granted planning permission by Article 3 and Schedule 2, Part 3, Class G.
10. An additional matter is that the Council alleges that the building was not constructed in accordance with planning permission granted under reference 14/01958/FUL essentially for demolition of part of the existing building, change of use of part of the first floor from Use Class A1 to A2 and a roof extension accommodating 2 x 1 bedroom residential units.
11. It served a temporary stop notice in 2015 to halt the construction. The temporary stop notice would have expired after 28 days and the Council has not issued an enforcement notice. It could though still do so as under s171B(1) of the Town and Country Planning Act 1990 as amended (1990 Act), this would need to be issued before the end of the period of four years beginning with the date on which the operations were substantially completed.
12. I do not know when (or if) the building was substantially completed **or** whether the Council intends to issue an enforcement notice against the building operations **or**, if so, whether any appeal against such a notice could succeed on any ground. However, it is fair to say that the appellant has not shown that it is not too late for the Council to take enforcement action. The matter of expediency is not one for an Inspector on appeal.
13. Thus, there is a question over whether the building is unlawful under s191(2) of the 1990 Act. If it were unlawful, this would trigger the operation of Article 3(5) of the GPDO which provides that the permission granted by Schedule 2 of

the GPDO does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. I have though in any event found that the proposed change of use would not be PD due to the absence of evidence indicating an actual A2 use of the building.

14. Article 3(1) of the GPDO states that the planning permission granted for the classes of development described as PD in Schedule 2 is granted subject to the provisions of regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017. Related to this, the Council raises the issue as to whether the proposed change of use would be likely to have a significant effect on the Thames Basin Heaths Special Protection Area. The appellant has submitted a draft Unilateral Undertaking seeking to address this matter. However, in view of my finding above that the proposed use would not be PD for other reasons, it is not necessary to consider this matter.

Conclusion

15. I therefore conclude on the main issue that the decision of the Council to refuse a certificate of lawful use or development was well founded
16. For the reasons given above, and taking into account all other matters raised, the appeal should not succeed.

V Bond

INSPECTOR