



Appeal Decision

Site visit made on 11 December 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State:

Decision date: 19 February 2020

Appeal Ref: APP/C5690/W/19/3233617

50 London Road, London SE23 3HF

- 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 (GPDO).
 - The appeal is made by Clearwood Limited against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/110623, dated 13 March 2019, was refused by notice dated 1 May 2019.
 - The development proposed is described as "a change of use of the above premises from Class B1(a) and any land within its curtilage to dwellinghouses (Class C3). The proposal is for 1 one bedroom flat".
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Decision

1. The appeal is allowed. Approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use from offices to a dwellinghouse at land at 50 London Road, London SE23 3HF in accordance with the terms of the application Ref DC/19/110623, dated 13 March 2019, subject to the following conditions.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: LND50/EX001; LND50/EX010; LND50/EX011; LND50/EX012; LND50/EX020; LND50/EX021; LND50/EX022; LND50/EX023; LND50/EX030; LND50/EX031; LND50/PR110 Rev.C; LND50/PR111 Rev.A; LND50/PR112; LND50/PR120; LND50/PR121 Rev.A; LND50/PR122 Rev.A; LND50/PR123; LND50/PR130 Rev.C, and LND50/PR131 Rev.C
 - 2) The use as a Class C3 dwellinghouse shall not commence until details of the cycle parking have been submitted to and approved in writing by the local planning authority. The space approved shall be provided prior to the first residential occupation of the unit and thereafter shall be retained and used for no other purpose.
 - 3) The use as a Class C3 dwellinghouse shall not commence until details of the waste and recycle materials storage arrangements have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the first residential occupation of the unit and specified areas thereafter retained for these purposes.

Preliminary Matters

2. The GPDO at Class O enables 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) to be permitted development. This is subject to requirements at O.1 that amongst other things, the building must have been in a lawful B1(a) office use on 29 May 2013, or 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. The Council contend that there are insufficient details to confirm that the lower ground floor of the appeal premises was in use as offices on the relevant date and furthermore, that insufficient information has been provided in relation to the highway and noise impacts of the proposal.

Main Issues

3. The main issues therefore are (a) whether the proposal would be granted planning permission by Article 3, Schedule 2, Part 3 and Class O with regard to the requirements of Class O.1 (b) of the GPDO, and if so (b) whether or not prior approval would be required in accordance with the conditions set out in paragraphs O.2.(1) (a) and (d) of the GPDO.

Reasons

Office use

4. The site is a three storey building comprising a shop unit with flats over at the front with a passageway leading to a two storey rear projection to which the appeal relates. This has accommodation on ground and lower ground floor levels, and an enclosed yard at lower ground floor level. The appellant currently operates a property management company business within the rear projection. The proposal is to use these premises as a one bedroom flat.
5. At the time of my visit, the ground floor was in use as an office, a small lower ground floor room was used to store files and papers in boxes and a larger lower ground floor room, which was largely empty, was in use as a store for a few ladders, paint and some building materials. The appellant's company Clearwood Limited, claim to have operated from the building since 1st March 1994 using the ground floor as offices and the lower ground floor as ancillary storage. A sworn statement by Mr Rodger of Clearwood Limited confirms that *"the lower ground floor (the inside storage) has been used by Clearwood Limited to store archived files for us only and the outside storage area has been used to store building materials and plant for our use."* This accords with my findings.
6. Sworn statements have also been submitted from Alnoor Kassam and Johann Blandford who have jointly operated an opticians' practice at the ground floor lock up shop at 50 London Road. They confirm that during the time of their tenancy since 1 March 2007 that the ground and lower ground floor rooms in the rear projection have been solely used by Mr Rodger trading as Clearwood Limited in connection with his business. The larger of the two lower ground floor rooms can only be accessed from a yard alongside. The yard is enclosed by fencing to adjacent rear gardens behind shops to one side and by a high flank wall to an adjacent supermarket to the other side. With independent access to the rear yard so constrained it is not plausible that the lower ground

- floor rooms could have been used independently from the ground floor office. Such independent use would also be contrary to the sworn statements.
7. The issue that remains therefore is the nature of the use of the lower ground floor rooms in association with the ground floor office use. It is not disputed that the lower ground floors have been used for storage purposes. However, there is no evidence before me that the storage use has related to a different activity to the offices above or that the storage use has been the primary activity or an equal activity in a joint use. The smaller lower ground floor room is of modest size compared with the office above; its use for storage of office related products would be akin to the wider office use. Storage within the larger lower ground floor room would appear to have been of a different kind of use to storage of ordinary office paraphernalia. However, available evidence from visits and statements all point to a low level use of building products but nonetheless related to the appellant's property management business.
 8. The evidence points to the building products storage as being ancillary in nature in that it provides support to the primary office activities of the organisation. It is additional but less important and therefore subsidiary. This storage use could also be described as incidental in that it has occurred as a minor accompaniment, an activity that is liable to happen as a consequence of the wider scope of the appellant's office business in managing property. Storage is specified as a separate use to offices in the Town and Country Planning (Use Classes) Order 1987 (as amended), but Article 3(3) of the Order confirms that an incidental use is not excluded from the use to which it is incidental merely because that incidental use is specified in the Schedule to the Order as a separate use. The appellant has referred to an appeal decision in which an Inspector reached a similar conclusion in relation to an incidental use¹. My finding on the first issue is that there is sufficient evidence to confirm that the lower ground floor of the appeal premises was in use as offices on the relevant date 29 May 2013.
 9. The Council has discounted the statements from the two owners of the optician's practice as they have not had access to the storage rooms and have not said how the rooms have been used. But these statements do confirm that the rooms have been used solely by the appellant in connection with his property business. As long standing neighbouring occupiers of the same building with adjacent access points on to London Road, the opticians would have had a general awareness of how the rooms have been used. Furthermore, they confirm that have not been used independently of the property business. The Council also questions the legal standing of all submitted statements. However, the appellant has confirmed that these statements were all sworn in front of a Commissioner for Oaths. As such, they should be afforded full weight in consideration of the proposal.
 10. The Council's site visit records indicate use of the smaller lower ground floor room as a kitchenette, a matter contested by the appellant. The appellant's photos show wall mounted cupboards and work surfaces similar to those found in kitchens, but no other indication of kitchen use. But even if there had been a kitchenette in this small room, this would have been another incidental activity and would not change the nature of the primary use of the premises as offices or indicate that an alternative independent use has taken place at the site.

¹ APP/B5480/W/18/3214140

Prior approval

11. The Council contend that insufficient information has been submitted in respect of two issues for prior approval to be granted. Firstly, in relation to impacts of noise from commercial premises on the intended occupiers of the development, the Council seek greater analysis of impacts from a workshop at lower ground floor level relating to the optician's practice. The submitted rating record for 50 London Road confirms that this is a small area of only 10.32 square metres. The workshop is located close to the lower ground floor rooms in the proposed dwelling, but has no window or door facing the open yard and is accessed from the shop on the floor above. It is highly unlikely that workshop activities relating to an optician's practice within this small room would be so intense as to be harmful to living conditions in the proposed dwelling. The Council has not indicated any other possible source of noise nuisance in the vicinity and I did not identify any at my site visit.
12. In respect of highway impacts, the Council's only concern relates to suitable cycle storage space. It considered a space specified under an internal staircase to not be suitable as it would not be a dedicated space or step free. The appellant has submitted a revised plan that shows how a step free dedicated space could be provided adjacent to the access corridor. The Council's statement confirms that this is a matter that could be addressed by a planning condition.

Conditions

13. Section W (13) of Part 3 of Schedule 2 to the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. In addition, Section W (12) sets out that where prior approval is required development must be carried out in accordance with the details approved by the local planning authority. The revised cycle storage plan was not submitted to the Council during the application. I concur with the Council that this and refuse storage arrangements could reasonably be covered by planning conditions. In the interests of certainty, I shall list in a condition the approved plans that were submitted to the Council. Paragraph O2 (2) confirms that development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

Conclusion

14. For the reasons given above I conclude that the appeal should be allowed.

Rory MacLeod

INSPECTOR