



Appeal Decision

Site visit made on 9 March 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Appeal Ref: APP/N5660/N/19/3241191
1-5 Hinton Road, Brixton SE24 0HJ

- 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 St Clair Developments Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/01066/P3O, dated 15 March 2019, was refused by notice dated 16 May 2019.
 - The development proposed is change of use from office (Use Class B1a) to residential (Use Class C3) of part ground and first floor at 1-5 Hinton Road to create seven flats.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, under Schedule 2, Part 3, Class O, require the local planning authority to assess the proposed development on the basis of its impact on transport and highways; contamination risk; flooding risk and noise, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The appellant has put forward revised plans illustrating bicycle and enclosed bin storage provision, as well as additional information relating to noise and two statutory declarations from Mr Muhammad and Mr Kennedy in support of the appeal. The Council in its Statement of Case advises that due to the updated information submitted the Council sent letters to the occupiers of properties which were notified during the course of the planning application and consulted its noise pollution team. As interested parties have had the opportunity to comment on the additional information submitted in support of the appeal, in accepting these details, I do not consider the interests of parties who might wish to comment would be prejudiced. For this reason, I have had regard to the additional information.

Main Issues

4. I consider the main issues in this appeal to be whether the proposed development would be granted planning permission by Schedule 2, Part 3,

Class O and having regard to the impact of the proposed development on transport and highways, as well as noise from commercial premises on the intended occupiers.

Reasons

Class O.1(b)

5. Paragraph O.1 of Class O sets limitations as to when development is not permitted by Class O. Class O.1(b) indicates that the development would not be permitted if *"the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Uses Classes Order, (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 used."*
6. The appellant has indicated that the first floor of the property, that is accessed via two entrances at ground floor, has been used as the offices of the Nation of Islam for more than 10 years. It is said that events are held on the premises, such as, motivational speaking events, religious teachings and community gatherings, at weekends or on weekday evenings. However, it is asserted that the primary use of the first floor has been B1(a) offices as the Nation of Islam's European headquarters since 2003 and any other events are ancillary to the main office function.
7. The Council has recently considered and determined an application in December 2019 for a Certificate of Lawful Development (existing) with respect to the use of the first floor as an office (Use Class B1a). Under that application the applicant's evidence is required to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and there being no contradictory evidence. The Council concluded that the applicant had not provided adequate evidence to prove that the first floor has been used as offices (B1(a)) for a continuous period of ten years. However, I accept that application would not necessarily deal with the specific use of the property on 29 May 2013 and that is the test set by Class O.1(b).
8. The planning history held by the Council does not record an office use at the property. It is advised that as the organisation is a registered charity it is not subject to business rates, albeit the Council has highlighted that there is no records of any requests for discounts/exceptions that would be applicable to a registered charity such as this one.
9. The Council has provided extracts from The Nation of Islam UK – European Regional HQ webpage, along with other social media pages that advertise events, such as, youth and community group meetings, training workshops, seminars/services, amongst other events. I note that as part of a previous prior approval application for the same proposal (planning ref: 18/01065/P30) the Council acquired evidence of advertised events between 18 May 2013 and 22 June 2013 that promoted community events at the property during this period.
10. Statutory declarations have been provided by Mr Muhammed and Mr Kennedy. Mr Muhammad confirms that the first floor has been occupied by the Nation of Islam since 2003 and used as its European Headquarters offices between 2003 and 2013. During this period he advises that this has been the main use of the building. Notwithstanding this, the Council has directed me to a sign at the

property that has been in place since 2008 that advertises three Mosque services per week. Mr Muhammed explains that the term 'mosque' is used as a place for community uses rather than referring to a place of worship and confirms that the sign clearly shows that when running, community meetings are held on three occasions a week.

11. Mr Kennedy has pointed to 2002 enforcement investigations relating to the construction of a first floor. It has been suggested that the absence of enforcement action from the Council has led to the B1 office use becoming lawful through the 10-year rule. The Council has referred to records held by the Council's business rates team and enforcement section. However, I have not been provided with the full details of these records. Despite the Google Earth imagery provided by the appellant, I cannot clearly determine that those records, or those 2002 enforcement investigations referred to by Mr. Kennedy, would have related to the first floor as it was on 29 May 2013.
12. Mr Kennedy advises that a business rate demand from May 2004 indicates offices at the premises. However, this was some time ago and relates solely to that point in time. Mr Kennedy also refers to marketing material that describes the use of the site as 'commercial', but this does not indicate an office usage. This marketing does not provide a clear indication as to the use class of the property.
13. I have been provided with a legal opinion by the appellant that makes reference to case law¹. The opinion concludes that the Nation of Islam used the premises for a single purpose as their European headquarters office and that more probably than not that, on 29 May 2013, the first-floor premises at were in B1(a) use. However, as discussed above the Council has acquired evidence of advertised events between 18 May 2013 and 22 June 2013 that promoted community events at the property during this period. In addition, the appellant's own evidence indicates six events were held at the premises in the months leading up to 29 May 2013. Mr Muhammad's declaration also confirms that the sign shows that community meetings have been held on three occasions a week and that since late 2013 the use of the property has evolved to include teaching to some groups of children by New Mind Trust.
14. It appears to me that events and gatherings formed an integral part of the use of this property by the Nation of Islam, rather than activities incidental or ancillary to the office headquarters use. These events would relate more closely to D1 uses. On the available evidence that is before me it does not appear to me that the premises had been used solely as a B1(a) office use prior to and post 29 May 2013. Consequently, the evidence leads me to the view that the property most likely would have been in a mixed use on 29 May 2013.
15. In relation to the main issue the evidence does not clearly demonstrate that the property was solely used for B1(a) purposes on 29 May 2013. The statutory declarations do not provide sufficient evidence that would adequately prove that the first floor of 1-5 Hinton Road was used solely as an office at this specific point in time. I, therefore, cannot conclude that this evidence substantiates that a solely office use was established at the site that relates to the first floor of the building as it was on 29 May 2013.

¹ Burdle v Secretary of State [1972] 3 All ER 240

16. The appellant contends that the Council has applied the wrong legal test in referring to 'proof' rather than the 'balance of probabilities' which, it has been said to be the correct test when establishing the lawful use of a site. The test that Class O.1(b) sets requires the property to fall within a B1(a) Use Class at a specific point in time. The information does not provide sufficient evidence that would indicate that the property was solely within a B1(a) use on 29 May 2013.

Transport and highways

17. To support this appeal the appellant has provided a Unilateral Undertaking to secure the development as 'Car Parking Permit Free' and to enter into a 'Car Club Agreement'. However, the Council has highlighted concerns in respect of the execution of the Undertaking. Consequently, I am not satisfied that the Undertaking would achieve its intended purpose.
18. A parking survey was not submitted to support the application that might assist the appellant's argument that the development would not detrimentally impact on parking in the area. I acknowledge that the proposal is intended to be a car free scheme but without an appropriate legal mechanism in place future occupiers would not be prevented from making use of cars and other vehicles. I note the recent implementation of a controlled parking zone (CPZ) in the area, which has been a response to high parking pressure. The proposal cannot be considered to be a car free scheme and, as such, there would be nothing to prevent future occupiers from adding to the existing pressure from parking vehicles on the surrounding streets.
19. I have been referred to two prior approvals at 215-217 Coldharbour Lane permitted by the Council. The Council advises that a CPZ was not in place at the time those applications were determined and a parking survey supported both those application. It appears to me that there were different considerations before the Council in those cases. This proposal can and should be considered on its own individual merits.
20. Turning to refuse/recycling storage and bicycle parking provision on site the appellant contends that this should not be a reason for refusing to grant prior approval from offices to residential. I have been referred to a recent appeal decision in the Borough relating to a condition imposed on a planning permission for prior approval. In that case the Inspector found cycle parking and refuse storage to be matters that would be reasonably related to a proposed residential unit in regard to its highways and transportation impacts. I consider the same to apply here.
21. The application provides limited space in which to provide refuse/recycling/bicycle storage facilities within the appeal site. Development without appropriate refuse and recycling storage facilities could lead to these being placed upon the public highway leading to obstruction of the public highway. To support the appeal the amended plans illustrate that four bicycles could be stored within the lobby of one the access stairwells and that five of the flats could accommodate bicycle storage. The plans also show that some refuse/recycling storage could be accommodated within a stairwell lobby. Given the flats would be at first floor I do not consider this to be a practical place to store bicycles. Furthermore, the refuse/recycling storage would not be conveniently placed for those occupiers of flats 5, 6 and 7. In addition, I have no substantive evidence that would indicate the refuse/recycling storage provision to be adequate to serve the occupiers of seven flats.

22. I have been referred to two public bike hanger facilities in close proximity to the site and there being good accessibility locally to public transport. However, I have not been provided with details relating to those facilities. On the available evidence I cannot conclude that those public bike facilities and/or accessibility to public transport would compensate adequately for the bicycle storage constraints at the site and address my above concerns.
23. I do not consider the imposition of planning conditions can be relied upon to appropriately deal with the pressure arising from parking vehicles on the surrounding streets or to provide adequate storage facilities for refuse/recycling/bicycle at the site.
24. Policies 6.3, 6.9, 6.10, 6.12 and 6.13 of the London Plan 2015 and Policies D4, T2, T3, T6, T7 and T8 of the Lambeth Local Plan 2015 are relevant in this case in so far as they relate to transportation and highways. These policies seek, amongst other matters, to take into account road network capacity and on-street parking, minimise the need to travel and reduce dependence on the private car, and improve conditions for people to cycle by providing, amongst other things, appropriate cycle storage facilities. The provision of refuse/recycling storage facilities is required to ensure that these facilities would not adversely affect the safety of highway users and the quality of the pedestrian and street space.

Noise

25. The appellant has submitted additional information relating to noise in support of the appeal. The Council has advised that the noise impact would be acceptable subject to a condition that could be imposed upon any approval issued. I see no substantive reason to lead me to a different view on this matter. The living conditions of future occupiers would not be harmed as a result of any adverse impact of noise, therefore, there would be no material conflict with relevant Policy Q2 of the Lambeth Local Plan.

Other Matters

26. I acknowledge that the proposal would contribute to the supply of housing in the borough, however that is not a consideration under the prior approval process.

Conclusion

27. In order to benefit from the provisions of Schedule 2, Part 3, Class O the proposal must comply with Class O.1(b) and have an acceptable impact on transport and highways, as well as noise. In this case I conclude that the requirements of Class O.1(b) have not been demonstrated to have been sufficiently met and that it has not been sufficiently demonstrated that the proposal would be acceptable in respect of transport and highways matters. As such, the change of use from office (Use Class B1a) to residential (Use Class C3) of part ground and first floor does not benefit from Class O permitted development rights.
28. For the reasons give above, the appeal should be dismissed.

Nicola Davies INSPECTOR