



Appeal Decision

Site visit made on 21 May 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2020

Appeal Ref: APP/R3650/W/20/3246067

**Unit 1B, Transform House, Unicorn Trading Estate, Weydown Road,
Haslemere, Surrey GU27 1DN**

- 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 Mr Patrick Brennan against the decision of Waverley Borough Council.
 - The application Ref CR/2019/0009, dated 10 June 2019, was refused by notice dated 1 August 2019.
 - The development proposed is the internal conversion to form a single residential unit.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal proposal follows a similar prior approval Ref. CR/2019/0004 for development at the site that was refused by the Council and then subsequently dismissed at appeal¹. The previous Inspector found that the use of Unit 1B met the requirements of O.1(b) of Class O, but that the scheme failed a condition of this Class concerning noise from commercial premises on the intended occupiers. I henceforth refer to this as the 'previous prior approval scheme'.

Application for Costs

3. An application for the award of costs was made by Mr Patrick Brennan against Waverley Borough Council. This application is the subject of a separate decision.

Main Issue

4. The main issue is:
 - whether or not the proposal would be permitted development under Class O, with particular regard to whether the appeal building has an existing B1(a) (office) use and meets the requirements of paragraph O.1(b) of Class O.

¹ APP/R3650/W/19/3235306

Reasons

5. Class O permits development consisting of a change of use of a building and any land within its curtilage from 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. The appeal building must therefore have an existing office use. In addition, paragraph O.1(b) states that development is not permitted if the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order— (i) on 29th 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.
6. The appeal site is situated within the Unicorn Trading Estate, a large commercial estate constructed in the 1980's. Unit 1B was granted as a light industrial unit and has had a number of occupants over time. This includes Transform Design and Construction Limited between 2003 and 2016 and, more recently, an architectural firm and a property investment company. At present it comprises office and warehouse space at ground floor level as well as office space on the floor above. There is a dispute between the parties as to whether or not Unit 1B has an office use that meets the requirements of Class O.
7. The appellant has drawn my attention to a previous planning application which described an office use in 2009. He has also provided evidence from the Valuation Office Agency (VOA) which shows an element of office use from 2010. From the evidence, it would appear that there has been some degree of office use at the unit from at least 2003 at ground and first floor levels. However, the Council state that the unit has also had a warehouse/storage use at various points in time. Such a use is shown within the appellant's VOA evidence. It has referred me to a previous planning application which shows that the ground floor of the unit was used principally for storage purposes in 2003. This application also shows that this storage use was greater in terms of floorspace than any office use at this time. Furthermore, the Council has cited another previous planning application which describes elements of office space as ancillary to a storage use in 2009.
8. I have not been provided with any signed or sworn statements from the current or former occupants to clarify the nature of the use of Unit 1B at present or over time. Neither has the current lawful use of the unit been assessed through the submission of a Certificate of Lawfulness. Taking this and all of the above into account, it is not clear whether the warehouse/storage element is ancillary to an office use or whether it is functionally independent as the primary use or results in a mix of uses. From the evidence provided, I also cannot be certain that a primary office use has been established through the passage of time, with regard to Section 171B of the Town and Country Planning Act 1990. Under these circumstances, I cannot be certain that the unit has a current and lawful primary office use or that such a use would comply with the requirements of O.1(b) of Class O.
9. The Council did not originally object to the previous prior approval scheme based on the use of Unit 1B. It only raised such concerns during the subsequent appeal process, where it provided evidence including a third party representation to this effect. It is not clear what evidence was before the previous Inspector. However, her discussion regarding the use of the unit centres mainly on the identified third party representation, which was given

only limited weight. Contrary to this, the Council objected to this current proposal on the basis of the use of the unit from the outset and has provided evidence as to why it has done so. This is set out in its officer report and Appeal Statement. Consequently, the circumstances of the previous prior approval scheme are not directly comparable to this current appeal, which I have considered on its own merits and on the basis of the evidence before me in any event.

10. Under Schedule 2, Part 3, Paragraph W. (3) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) an application may be refused where the developer has provided insufficient information to enable it to be established whether the proposed development complies with any conditions, limitations or restrictions as may be applicable to the development in question. The evidential burden lies with the appellant. For reasons given above, I am not satisfied that there is sufficient evidence to confirm that the proposal would meet the limitations of Class O (including the requirements of O.1(b)) and prior approval should therefore not be given.

Other Matters

11. Although not within its decision notice, the Council raise concern with regard to compliance with the conditions set out at paragraph O.2-(1) of Class O, with particular regard to noise from commercial premises on future occupants. However, given my conclusion in relation to the main issue, there is no need for me to consider this further as it would not alter the outcome of the appeal.
12. The proposal could have an impact upon the Wealden Heaths Phase II Special Protection Area (SPA). However, as I am dismissing this appeal, I have not considered this matter further as it is not determinative to my decision.

Conclusion

13. For the reasons set out above, I am not satisfied that the proposal meets the requirements of Class O. I therefore conclude that the proposal is not permitted development under the provisions of this Class and that the appeal should be dismissed.

M Heron

INSPECTOR