



Appeal Decision

Site visit made on 3 June 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Appeal Ref: APP/Q3820/W/19/3243637

First Floor Only, 50-54 High Street, Crawley RH10 1BT

- 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, Paragraph O.2(1) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
 - The appeal is made by Mr J Gluck (Flexgate Properties Limited) against the decision of Crawley Borough Council.
 - The application Ref CR/2019/0556/PA3, dated 26 July 2019, was refused by notice dated 1 October 2019.
 - The development proposed is the change of use of offices (Class B1a) to form 6 apartments.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Crawley Borough Council against Mr J Gluck (Flexgate Properties Limited). That application is the subject of a separate decision.

Procedural Matter

3. The address and the description of the development used in the heading above have been taken from the original application form, albeit with unnecessary procedural information removed from the description of the development. An alternative address was used on the appeal form and the Council used a different description of development in their decision notice. However, it has not been confirmed that these have been agreed by both parties. In any event, the variations are minor and I have no reason to believe that any party would be prejudiced in this respect.

Background and Main Issues

4. The application has been made under the terms of Paragraph O.2(1) of Class O of Part 3 of Schedule 2 of the GPDO¹ on the basis that the existing use of the building falls within Class B1(a), as defined by the Use Classes Order² (UCO), and that the proposed use would be as 6 dwellinghouses falling within Class C3, as defined by the UCO.
5. In order for Class O of Part 3 of Schedule 2 of the GPDO to be applicable, the existing use of the building, as at 29 May 2013 or when it was last in use, must have been for purposes falling within Class B1(a), as defined by the UCO. Furthermore, Section 3.(5) of the GPDO states that the existing use must be lawful

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

² The Town and Country Planning (Use Classes) Order 1987 (as amended).

for permitted development rights contained within Schedule 2 of the GPDO to be applicable. Therefore, having regard to the submissions of both main parties, the first main issue is whether the development would be permitted development having particular regard to the use of the building. If it would be permitted development, the second main issue is the effect any noise impact from commercial premises would have on the intended occupiers of the development.

Reasons

6. It has been indicated that outline planning permission was granted in 1962 and reserved matters were approved in 1963 to enable the extension of the ground floor bank at the appeal site and the creation of offices at first floor. This is not disputed by the appellant and the Statutory Declaration that has been provided by a former tenant of the building also refers to the previous use of the first floor in conjunction with the ground floor bank. However, the appellant's submissions identify that the staircase linking the ground and first floors was closed and the two parts of the building have been rated separately for the purpose of business rates.
7. The submissions of the main parties identify that the first floor of the premises has subsequently been used by different companies, with the classification of those uses being disputed. However, the main parties agree that, after the permissions referred to above, there have been no subsequent planning permissions granted that relate to the use of the first floor of the building. Notwithstanding the contentions of both main parties, I do not find that the absence of any further planning permissions, in itself, demonstrates that the building has been used for purposes falling within Class B1(a) of the UCO or for any other use.
8. The main parties agree that the first floor of the building has been vacant since approximately August 2016, but that the most recent use of the premises was, at least in part, as a taxi office. Section 3(6) of the UCO states that there is no class specified for a use that consists of a taxi business or business for the hire of motor vehicles. As a result, a taxi business use does not fall within Class B1(a) of the UCO. However, the case of the appellant is that the premises was used for administrative purposes only and as such the premises should be deemed to have been used as an office.
9. A Statutory Declaration has been provided by a former tenant of the premises who states that the premises was used for administrative purposes only, with taxi drivers visiting on a weekly basis in most instances and there being no access into the building for members of the public. However, the Statutory Declaration also states that the taxi call centre operated from the first floor of the building and, prior to 2012, this was facilitated by an antenna at the site. These activities appear to align with the operation of a taxi business and I am not persuaded that the occasional presence of drivers, the inaccessibility of the premises by customers and the absence of exterior signage represent circumstances to convincingly conclude that the use of the premises was as an office and not as a taxi business. As such, the Statutory Declaration does not provide conclusive evidence that the most recent use of the building fell within Class B1(a) of the UCO.
10. Notwithstanding the above, whilst the former tenant's Statutory Declaration identifies that his companies operated at the site between August 2000 and August 2016, it also states that he did not visit the premises until 2008. In this regard, whilst the conclusion of the appellant's appeal statement identifies that the use commenced in 2006, Paragraph 4.17 of the appellant's appeal statement and the letter dated 26 July 2019 that accompanied the application both indicate that the use by the former tenant commenced in 2008. Therefore, even if I were persuaded that the use of the premises fell within Class B1(a) of the UCO, I do not

find that the evidence before me conclusively demonstrates that the building was used for that purpose for a period of 10 years as would be required for a use to be lawful on the grounds that it is immune from enforcement action. In this regard it would remain open to the appellant to apply for a Certificate of Lawfulness in respect of the existing use and any such application would be unaffected by my determination of this appeal.

11. The evidence before me indicates that the former tenant had other companies which also occupied the premises between 2012 and 2016. However, the Statutory Declaration indicates that those businesses only utilised a part of the first floor and that this occurred at the same time that the taxi business was also operating from the site. Therefore, even if those uses fell within Class B1(a), that would not demonstrate that the whole of the first floor was used in that way.
12. The appellants submissions identify that the Valuation Office Agency (The VOA) have described the use of the first floor as "offices and premises". However, I have no basis to conclude that The VOA had regard to the UCO or the distinction between uses falling within or outside Classes A2 or B1(a) when describing the premises. As such, I do not find that the description used by The VOA is conclusive or determinative in respect of the existing lawful use in planning terms.
13. The Statutory Declaration also identifies that a kitchen company occupied the site for a 4 year period and used the premises as their head office. However, insufficient information is provided in relation to the nature of that use and in any event the use only occurred for 4 years. Therefore, the evidence available does not demonstrate that the use by a kitchen company had an effect on the lawful use when considered alone or in addition to the later uses that occurred at the site.
14. Paragraph W of Part 3 of Schedule 2 of the GPDO states that an application may be refused where the developer has provided insufficient information to enable it to be established that the proposed development complies with any of the applicable conditions, limitations or restrictions. For the reasons given above, the evidence provided by the appellant does not enable it to be established that the lawful use of the building is as offices falling within Class B1(a), as defined by the UCO. Therefore, insufficient information has been provided to demonstrate that the proposed change of use complies with the limitations and restrictions of Class O of Part 3 of Schedule 2 of the GPDO.
15. As I have reached this conclusion in respect of the first main issue, it is not necessary to consider whether noise from commercial premises would have an acceptable effect on the intended occupiers of the development.
16. As this appeal relates to an application made under the terms of Class O of Part 3 of Schedule 2 of the GPDO rather than an application for planning permission, the planning merits of the proposed development that have been identified by the appellant do not have a bearing on my assessment.

Conclusion

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

Ian Harrison

INSPECTOR