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# Appeal Decision

Site visit made on 24 September 2020

**by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 September 2020**

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**Appeal Ref: APP/K0425/W/20/3248842**

**Flightform House, Halifax Road, Cressex Business Park, High Wycombe, Bucks, HP12 3SN**

- 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.
  - The appeal is made by I L Beeks (PF) Ltd against the decision of Wycombe District Council.
  - The application Ref 20/05092/PNP30, dated 14 January 2020, was refused by notice dated 9 March 2020.
  - The development proposed is a prior approval application (Part 3 Class O) for change of use of existing building falling within Class B1(a) (Offices) to Class C3 (Dwellinghouses).
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. I have utilised the description of the development as found on the Council's decision notice as it more concisely describes the development than that on the appellant's original application form.
3. Since the refusal of this application it is acknowledged that the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 reclassified Class B1 to Class E. The regulations include transitional provisions retaining the effect of permitted development rights based on the classes that were in place prior to 1 September 2020. The changes do not, therefore, change the basis for the determination of this appeal.
4. Since the refusal of this application on 20 July 2020, an Article 4 Direction has been placed upon the Cressex Business Park. This has been clearly raised within the Council's statement of case and the appellant has had an opportunity to comment on the Council's statement, and this direction, within their final comments.
5. As part of the appeal submissions the appellant has introduced new documentation which did not form part of the original application in the form of lease details. Given that the Council has had chance to comment on these within their submitted statement of case I have, on this occasion, accepted the newly introduced documents as part of the appeal.

## **Main Issues**

6. The main issues are:

- i) whether the building was in office use on 29 May 2013 such that the proposal would be permitted development under Class O of Part 3 of the GDPO;
- ii) whether the noise associated with the existing and future use of the adjacent and commercial units would impact upon the residential amenities of future occupiers;
- iii) whether the appeal site benefits from permitted development rights under Class O of Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

## **Reasons**

### *Whether the appeal site was in office use on 29 May 2013*

- 7. Class O of the GDPO permits 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) of that Schedule. There are, however, a number of circumstances where such development is not permitted, which are listed in paragraph O.1
- 8. Criterion (b) (i) of paragraph O.1 of the GDPO excludes proposals from being permitted development where the building was not used for a use falling within Class B1 (a) (offices) on 29 May 2013. In this case the Council considers that it cannot be demonstrated the building was in office use at the appropriate date.
- 9. The appellant has submitted, as an appendix to their statement of case, a page from a lease dated 19 January 2010 and two pages from a lease renewal dated 27 October 2012. I acknowledge the term in the renewal lease is to 30 September 2015 but there is no plan attached to the documentation within the submissions which confirms, for the avoidance of doubt, that the lease relates specifically to the appeal building.
- 10. The evidence before me does not fully demonstrate that the lease in question was for the appeal building and, therefore, that it was in office use on 29 May 2013. As such it would not meet the requirements of paragraph O.1.

### *Residential amenities - noise*

- 11. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 introduced the requirement for a determination as to whether the prior approval of the authority will be required as to the impacts of noise from commercial premises on the intended occupiers of the development. This is noted in the Council's documents as well as within an informative on the decision notice.
- 12. At the time of my visit, which was lunchtime on a Thursday, the industrial estate was very busy with traffic, people outside varying premises and during my visit a couple of vehicles did turn around at the appeal site entrance. Whilst I acknowledge my visit is a snapshot in time, based on the evidence

before me, I am not convinced that the amenities of future occupiers could be adequately mitigated against.

13. I note the correspondence between the appellant and the Council on such matters as well as other decisions from the Council which have been submitted by the appellant. It would appear in one of those decisions<sup>1</sup> (on the same estate) that an Acoustic Noise Assessment report was submitted. This would have given specific evidence as to noise levels and made recommendations which could then be conditioned to create a suitable scheme. Whilst I do have the decisions in front of me, I have no further information about the sites and/or their surroundings so can attribute limited weight to them within the consideration of this appeal.
14. Given that the impacts noise from commercial premises on the intended occupiers is a specifically listed consideration I do not think it unreasonable that more information is requested. In the absence of specific noise surveys, and with evidence of noise complaints stated by the Council, I find on the evidence before me that the proposal would fail to comply with paragraph O.2 d) of the GPDO.

*Whether the appeal site benefits from permitted development rights*

15. Since the refusal of this application on 20 July 2020, an Article 4 Direction has been placed upon the Cressex Business Park within which the appeal site stands. A copy of the Article 4 Direction has been submitted with the Council's statement of case and confirms that development of the description set out in the First Schedule<sup>2</sup> shall not be carried out on the land described in the Second Schedule<sup>3</sup> unless planning permission is granted (that is therefore through a full Change of Use application).
16. Even if I had found that the appeal site had been in office use on 29 May 2013, and that the impacts of noise on the intended occupiers had been acceptable, the impact of the Article 4 Direction is that the appeal site does not benefit from permitted development rights for a change of use under Part 3, Class O of the GPDO at the date of determination. The proposal cannot, therefore, be classified as permitted development utilising the prior approval route.

**Other Matters**

17. I note that the appellant makes reference to three other prior notifications, for office to residential conversions, and has submitted their decision notices as part of their final comments. Despite this it is each case upon its own merits with determination being made upon the legislation in force at the point of determination. The decision, for the prior approval granted on the same estate as this appeal, was made prior to the Article 4 Direction being in place and thus would have benefitted from the permitted development rights in question. The decision was made in circumstances which were materially different.

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<sup>1</sup> 18/07674/PNP30

<sup>2</sup> Development consisting of a change of use of any building, and any land within its curtilage from a use falling within Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (offices) to a use falling within Class C3 of that Schedule, being development comprised within Class O of Part 3 of Schedule 2 to the GPDO and not being development within any other class.

<sup>3</sup> All that land and buildings situated at and known as Cressex Business Park, High Wycombe, Buckinghamshire shown for identification purposes edged in Bold Black on the attached map.

18. Reference to paragraph 117 and 118 of the National Planning Policy Framework 2019 is noted, however, this is limited weight taking in account the other factors outlined within this decision as well as the basis of determination.

**Conclusion**

19. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

*Eleni Randle*

INSPECTOR