
Appeal Decision

Site visit made on 11 August 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2020

Appeal Ref: APP/F0114/W/20/3248638

Upper Floor, The Barn, Bailbrook Lane, Bath BA1 7AB

- 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 Andrew Mercer against the decision of Bath & North East Somerset Council.
 - The application Ref 19/03218/ODCOU, dated 15 July 2019, was refused by notice dated 13 September 2019.
 - The development proposed is the conversion of upper floor office to single residential unit, internal alterations only.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the heading above is taken from the application form albeit I have omitted extraneous details which are not acts of development.

Background and Main Issue

3. Class O of the GPDO states that 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 (dwelling houses) of that Schedule is permitted development, provided that the criteria set out within paragraph O.1 are met.
4. Paragraph O.1(b) confirms that development is not permitted by Class O if the building was not used for a use falling within Class B1(a) (offices) either (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 in use.
5. The main issue is whether the building falls within a Class B1(a) office use such that it would benefit from permitted development rights afforded under Class O of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO).

Reasons

6. The appeal building's extensive planning history indicates that the upper floor of 'The Barn' received planning permission¹ in 2017 (the 2017 permission), for its change of use from an agricultural barn to an office (Class B1). The planning application form relating to the 2017 permission indicates that the change of use of the building was completed on 1 January 2013. However, this is not conclusive evidence that the use commenced at that time even if the Council did not challenge this at the time of determining that application. Additionally, there is no indication that that date was necessarily material to the Council's consideration of that application.
7. At the time of my visit, the upper floor was vacant, but contained office furniture and equipment in addition to a small meeting area and kitchen. On this basis there is no doubt that the upper floor of the appeal building has been in use as an office in recent years. However, the fundamental issue in this case is whether it was in use as an office in accordance with the terms of the GDPO referred to above.
8. I have had regard to the supporting evidence provided by the appellant. This includes legal documents dated 13th June 2013. Within this, there is a suggestion that the upper floor of the barn is occupied by 2OC, a renewable energy company, while reference is made to 2OC making future rent payments for July and August 2013. The appellant also confirms that 2OC began to use the upper floor of the barn as an office at the beginning of 2013 and occasionally by the appellant himself. However, the appellant's assertions are somewhat vague given that no detailed supporting evidence has been provided in respect of whether it was an office (Class B1) on or before the key date in the GDPO.
9. I have not been presented with a specific date as to when in 2013 2OC's occupation of the upper floor commenced. Moreover, whilst the appellant confirms that 2OC started paying rent for the use of the upper floor on 1st March 2013, I have no specific details to evidence this or information such as a letting agreement that related to 2OC's occupation of the upper floor office on or before the relevant date in the GDPO. Furthermore, it is not clear whether the appellant's own use of the office was ancillary to the agricultural use pertaining to the surrounding land or as part of a separate use within Class B1 (a).
10. I have also been referred to an extract from a letting agency's website relating to the marketing of the office. It includes an image of the office space, floor area details and the cost of rent per calendar month. These particulars are dated 27th October 2013, and although they provide an indication that the office was being marketed for use in 2013, they offer no compelling evidence that the upper floor was occupied and in use as an office (Class B1(a)) on or before 29 May 2013.
11. Whilst I note the completion date for the change of use of the upper floor of the appeal building in the application form to the 2017 permission, the evidence to substantiate this is limited and lacking sufficient detail for me to be certain that it complies with the requirements of the GDPO.

¹ Permission Ref 17/002222/FUL, dated 28th April 2017

12. Consequently, it has not been demonstrated that the building was being used for a Class B1(a) office use on 29th May 2013, such that it would benefit from permitted development rights afforded under Class O of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Other Matters

13. In light of my conclusion that the proposal is not permitted development as a result of the failure to meet all the criteria set out in Paragraph O.1 of the 2015 GPDO above, no further consideration of the other matters in Class O is necessary. For the reasons already set out, the proposal could not be considered as permitted development for assessment under the prior approval process.

Conclusion

14. The proposed change of use does not comply with the requirements of Schedule 2, Part 3, Class O of the GPDO in that it cannot be established that the upper floor of the building was in use as Class B1(a) offices on 29 May 2013, nor in Class B1(a) use on the day it was last in use before that date. Therefore, the proposed change of use to a Class C3 dwelling house is not permitted development and so this appeal cannot succeed.
15. For these reasons, the appeal is dismissed.

R. E. Jones

INSPECTOR