The Planning Inspectorate

Appeal Decision

Site visit made on 20 October 2020

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Appeal Ref: APP/C5690/W/20/3255759
285 Sydenham Road, London SE26 5EN

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Ronald Robb against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/20/115880, dated 24 February 2020, was refused by notice dated 9 April 2020.
- The development proposed is change of use from Use Class B1(a) Offices to Use Class C3 (Residential).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:

   - Whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), and if it would, whether or not it would require prior approval in respect of paragraph O.2 with specific regard to contamination risks on the site and transport and highways impact of the development; and

   - Whether sufficient information in relation to the net increase in dwellings has been provided.

Reasons

3. The appeal site is formed of a two-storey end terrace property located on the junction with Elderton Road and within a parade of shops.

4. The appellant contends that the ground floor of the building was in a lawful B1(a) office use on the requisite date 29 May 2013. The appellant refers to evidence including invoices, a finance statement and contract letters from 2013 and 2014 to demonstrate its lawful use. This information, however, has not been submitted with the application or appeal.

5. Whilst the Council have not carried out a site visit their evidence comprises information from the Valuation Office Agency (VOA) indicating that until April

2019 the property was listed and rated as a shop and premises. Further to this the planning history for the site relating to planning applications in 2016 and 2018 indicate that the ground floor was in retail use. As such, the Council contend that the lawful use of the building is not B1(a) office use.

6. In the interests of fairness, I must ensure that what is considered at appeal is what was considered by the Council and therefore I have dealt with the appeal on this basis. Whilst the information from the VOA may not be up to date there is no clear or unambiguous evidence to demonstrate that the lawful use of the building is B1(a) office use.

7. As such, based on the evidence before me, it is my judgement that on the balance of probabilities, the property was not lawfully in use as a B1(a) office on 29 May 2013. I therefore conclude that the proposed development is not permitted under Class O of the GPDO.

8. Given my conclusion, it is not necessary to consider whether prior approval should be given for the proposal or whether sufficient information has been provided.

Conclusion

9. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR