



# Appeal Decision

Site Visit made on 15 December 2020

**by Gemma Pannell BSc (Hons) MA MRTPI**

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

**Decision date: 22<sup>nd</sup> December 2020**

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**Appeal Ref: APP/B0230/W/20/3258110**  
**35 John Street, Luton, LU1 2JE**

- 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 Auction House Properties against the decision of Luton Borough Council.
  - The application Ref 20/00039/COM, dated 8 January 2020, was refused by notice dated 2 March 2020.
  - The development proposed is change of use from office(s) (B1(a)) to dwellinghouses (C3).
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## Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class O of the Town & Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for change of use from office(s) (B1(a)) to dwellinghouses (C3) at 35 John Street, Luton, LU1 2JE in accordance with the application Ref: 20/00039/COM, dated 8 January 2020, and the details submitted with it pursuant to Schedule 2, Part 3, Class O of the GPDO.

## Main Issue

2. 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 GPDO.

## Reasons

3. Schedule 2, Part 3, Class O of the GPDO sets out 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), to a use falling within Class C3 (dwelling houses) is permitted subject to various limitations and conditions.
4. One of those limitations, at paragraph O.1.(b), is that development is not permitted if the building was not used for a use falling within Class B1(a) (offices) on 29th May 2013 or, 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. In considering the buildings lawful use the Council has relied upon a grant of planning permission (05/00944/COU) for the change of use from offices to walk in advice centre and computer training centre. However, it is unclear from the

- submitted evidence whether this permission was implemented, or whether any subsequent office use was reinstated unlawfully.
6. In establishing whether or not a particular use is lawful the appellant does not need to prove matters beyond reasonable doubt and the appellant's own evidence does not need to be corroborated by independent evidence to be accepted. Thus, if the Council has no evidence of their own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to accept it. This should not however, be interpreted as an unqualified requirement to accept the evidence presented. Instead, the evidence still has to be sufficiently precise and unambiguous and should therefore be scrutinised accordingly.
  7. I note the evidence that the appeal property was rated as 'offices and premises' from 1 April 2010, and I acknowledge that evidence of this type is widely used to support cases involving the lawfulness of a use albeit, it does not conclusively prove lawfulness or otherwise at that time. However, the appellants evidence also consists of a Statutory Declaration which confirms that the building has been used as offices since March 2010.
  8. This seems to be reflected within the Councils officer report for previous applications on the site in 2012 (12/00423/FUL) and 2013 (13/00310/FUL) where the officer describes the building as being formerly used as auction rooms which were retained and refurbished with the basement and ground floor converted to offices with the floors above being flats.
  9. Having regard to the evidence submitted by both parties, I find that the information contained in the appellant's submitted declaration is clear and unambiguous. This evidence is not seriously undermined by the wider evidence such that it reasonably demonstrates that on the balance of probabilities, the property was lawfully in use as a B1(a) (office) on 29 May 2013.
  10. I therefore conclude that the application is for development that is permitted under Class O of the GPDO.

### **Other Matters**

19. The provisions of the GPDO require the local planning authority to assess the proposed development in respect of transport and highways impacts of the development, contamination risks on the site, flood risks on the site and impacts of noise from commercial premises on the intended occupiers of the development. The Council has raised no objection on these grounds, and I have found no reason to conclude otherwise.

### **Conclusion**

20. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.
21. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO is subject to the condition that it must be completed within a period of 3 years of the prior approval date.

*G Pannell*

INSPECTOR