
Appeal Decision

Site visit made on 11 January 2021

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/W0340/W/20/3260788

Elmwood Building, Southend Road, Bradfield Southend, Reading RG7 6EU

- 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 GDPO).
 - The appeal is made by Mr A Yussuof (Active Development Services Ltd) against the decision of West Berkshire Council.
 - The application Ref 20/01631/PACOU, dated 16 July 2020, was refused by notice dated 25 September 2020.
 - The development proposed is described as 'Prior Notification requirement under Part O of the GDPO for the change of use of offices (Class B1a) to form 3 apartments'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. This included the replacement of Class B1(a) (Offices) by a new Class E. However, transitional provisions until 31 July 2021 include that any references in the GPDO to such use or use class is to be read as if those references were to the use or use class which applied before the 2020 Regulations came into force.
3. Under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO, planning permission is granted for change of use subject to limitations and conditions. Paragraph O.1 of the GPDO sets out the situations whereby development would not be permitted including, as referred to by the Council, O.1.b that the building was not used for a use falling within Class B1(a) (Offices) of the Schedule to the Use Class Order on (i) 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.
4. The Council have confirmed that other requirements within Class O, with regards to transport and highway impacts; contamination risks; flooding risks; and impacts of noise from commercial premises are all met.
5. Finally, during the course of my site visit I observed that the whole building is currently vacant. Internal works have taken place, including the erection of stud walls, broadly reflective of the layout detailed on the proposed floor plans. However, this is not a matter raised by the parties and I have not been

provided with any evidence as to whether a change of use has occurred. As such, I have proceeded to determine the appeal on the evidence before me.

Main Issue

6. The main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 3, Class O of the GPDO with regard to the lawful use on 29 May 2013, or when last in use prior to that date.

Reasons

7. Both parties have referred to an earlier dismissed appeal¹ at the site which related to a proposed change of use of the whole building to 5 dwelling units. In response to the earlier appeal the appellant has reduced the extent of the site to relate to all of the first floor and only part of the ground floor so as to create 3 apartments. Nonetheless, the proposal remains similar to the previous scheme and therefore, insofar as it relates to the current proposal, I afford the previous Inspector's findings significant weight.
8. The appellant's evidence includes a statutory declaration made and signed by a Vanessa Matthews on 6 January 2020 before a solicitor, under the Statutory Declarations Act 1835. This states that "the Property has been used as offices since I purchased the property on 27 March 2008". Whilst I afford the declaration weight, it is the same as previously submitted and does not provide any new information or greater clarity. The declaration indicates that the whole of the appeal address was used as offices, which the previous Inspector found not to be the case. Significantly, the declaration does not specify that the building, or part of the building, had been used solely as offices.
9. The previous inspector applied weight to the Valuation Office Agency (VOA) evidence. I acknowledge that this may not be based on a physical inspection of the premises, but it shows that in 2005 and 2017 that the ground floor was registered as warehouse, with the first floor in use as an office. Whilst the appellant has continued to provide little information as to why the Council's records differ from the declaration, they have removed an area of the ground floor from the application broadly equivalent to that detailed in the VOA evidence as being used for warehousing. However, I have little to indicate that this was the actual area used for warehousing and not office. Moreover, I have limited evidence to indicate that the office and warehouse activities were separate planning units, or that the warehouse was ancillary to an office use.
10. The existing floor plans submitted, whilst not reflective of my site observations and indicating the whole of the building as being used for offices, show a series of interconnected rooms consistent with a single planning unit. Furthermore, whilst the evidence indicates that the majority of the building's floor area was in use as offices, I have been provided with little additional information that the warehouse was an ancillary element to the office such as to reach a conclusion contrary to that of the previous Inspector. I note the other appeal decisions² referenced by the appellant in support of this proposal. However, I have not been provided with full details and these appear to differ from the appeal before me. As such, I afford these limited weight and have proceeded to determine the appeal on its own merits. On the balance of probabilities and the information available the building, including the part which forms the appeal

¹ PINS ref: APP/W0340/W/20/3246991

² PINS refs: APP/M5450/W/19/3229041 and APP/G5750/W/16/3162692

before me, appear to not be in B1(a) office use on 29 May 2013, or when last in use prior to that date.

11. Finally, whilst I note the other planning merits set out in the appellant's evidence, these are beyond the scope of the matter before me which is confined to the limitations and conditions set out within the GDPO.
12. Therefore, in conclusion on the main issue the proposed change of use would not meet the requirements of the GPDO for it to be considered as permitted development under the provisions of Schedule 2, Part 3, Class O with regard to the lawful use on 29 May 2013, or when last in use prior to that date.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

James Taylor

INSPECTOR