The Planning Inspectorate

Appeal Decision

Site visit made on 8 February 2021

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/R3650/W/20/3258825
1B, Unicorn Trading Estate, Haslemere GU27 1DN

- 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 Mr Patrick Brennan against the decision of Waverley Borough Council.
- The application Ref CR/2020/0001, dated 13 January 2020, was refused by notice dated 4 March 2020.
- The development proposed is internal conversion of B1(a) offices to single residential dwellinghouse C3.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Class O of Part 3 of Schedule 2 of the GPDO[1] 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[2], to a use falling within Class C3 (Dwellinghouses) of that Schedule, subject to specified limitations and conditions.

3. The appeal proposal follows two similar prior approval applications for development at the site, both refused by the Council and subsequently dismissed at appeal. In regard to prior approval Ref CR/2019/0004, dismissed at appeal[3], the Inspector found that the use of Unit 1B met the requirements of paragraph O.1(b) of Class O, but that the scheme failed a condition of this Class concerning noise from commercial premises on the intended occupiers. However, in regard to the later prior approval Ref CR/2019/0009, dismissed at appeal[4], the Inspector found that based on the evidence in that case the proposal would not meet the limitations of Class O, including the requirements of paragraph O.1(b).

4. Paragraph O.1(b) states that development is not permitted by Class O if the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order — (i) on 29th 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.

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
[2] The Town and Country Planning (Use Classes) Order 1987 (as amended).
[3] Ref: APP/R3650/W/19/3235306
[4] Ref: APP/R3650/W/20/3246067

5. In this case, having regard to the submission of both main parties, the main issue is whether the proposal would be permitted development under Class O with particular regard to the use of the building.

Reasons

6. The appeal site comprises Unit 1B and is situated within the Unicorn Trading Estate, a large commercial estate constructed in the 1980's.

7. The appellant has provided a 'Use Class History' for Unit 1B. In it the appellant states that the site was granted planning permission under Use Class III (light industrial) as defined by the Town and Country Planning (Use Classes) Order 1972. Moreover, he states that the Town and Country Planning (Use Classes) Order 1987 reclassifies Use Classes and Class III (light industrial) by way of its definition falls generally under Class B1.

8. The Council state that it is satisfied that the description of the original planning permission of the unit is specific enough to classify the original and only established lawful use of the unit as B1(c) (industrial processes) in the current Use Classes Order. However, the appellant argues that use for any other purpose within the same use class is allowed automatically and, in this regard, a change of use from B1(c) to B1(a) has occurred within Unit 1B gradually, between March 2003 and September 2009.

9. The Council do not dispute that an office use to varying degrees existed at the site throughout its history. However, a change of use from an office to a dwellinghouse under Class O will only be permitted development if the building was actually used as an office at the relevant date.

10. Under Class O 'building' includes 'part of a building', as defined in Article 2(1) of the GPDO. Consequently, taking into account that paragraph O.1(b) requires that the last use was one falling within Class B1(a), if the last use of part of the building subject to the proposed change of use was mixed use, the permitted development right granted under Class O would not apply.

11. In support of the appeal the appellant has submitted a signed letter from a previous owner of Unit 1B, which describes their use of the building from 2003 until late 2016. It clearly states that the offices on the ground floor and first floor continued to be used as offices throughout their occupation. However, it also goes on to state that "*From September 2009 the only area not clearly used as office space was that of the area the VOA describes as 'Warehouse' which had a mixed use including cycle storage and a fire exit point".*

12. The VOA[5] describe Unit 1B, Unicorn Trading Estate, from 1 April 2010 as 'Warehouse and premises'. Moreover, whilst the VOA describe part of the ground floor of the building as 'Office' they also expressly refer to part of the ground floor as 'Warehouse'. It seems to me that, as a matter of fact and degree, if the 'Warehouse' was indeed an office the VOA would have described it as such.

13. The appellant says that the 'Warehouse' area is similar in use to that of a basement concrete level in a traditional office complex where cycles and cars are parked. However, notwithstanding that the aforementioned letter from a previous owner states that the area included cycle storage and a fire exit point,

[5] Valuation Office Agency

it expressly states that the area on the ground floor described as 'Warehouse' had a mixed use. The description by the previous owner of that part of the ground floor of the building as 'Warehouse' is consistent with part of the description of Unit 1B used by the VOA and its description of part of the ground floor of the building.

14. Thus, based on the evidence before me, notwithstanding the existence of the staircase and the various doors referred to by the appellant, it has not been clearly demonstrated that the whole of the ground floor of the building was used entirely as office space falling within Class B1(a). The appellant says that the submitted photographs clearly show office use throughout. However, none of the photographs submitted show the 'Warehouse' area of the building and, in any event, the photographs are undated.

15. Paragraph W (3) of Part 3 of Schedule 2 of the GPDO states that an application may be refused where the developer has provided insufficient information to enable it to be established that the proposed development complies with any conditions, limitations or restrictions as may be applicable to the development in question. In this regard, the evidential responsibility lies with the appellant.

16. For the reasons outlined above, insufficient evidence has been provided to demonstrate that the proposed change of use complies with the limitations of Class O, including the requirements of paragraph O.1(b). Consequently, the proposal is not permitted development under Schedule 2, Part 3, Class O of the GPDO.

Prior Approval

17. Whilst not included as a reason for refusal on its decision notice, the Council raise concern with regard to compliance with the conditions set out in paragraph O.2 (1) of Class O, with particular regard to the impacts of noise from commercial premises on the intended occupiers of the development. However, given my overall conclusion that the proposal is not development permitted under Class O of the GPDO, there is no need for me to consider whether the proposal would satisfy the detailed prior approval conditions as it would not alter the outcome of the appeal.

Other Matter

18. The appeal site is located within the 5km buffer zone of the Wealden Heaths II Special Protection Area, a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for rare and vulnerable species of birds. The appellant has drawn my attention to a letter, dated 29 April 2020, that relates to an earlier similar proposal at the site, which confirms that Environmental Impact Assessment (EIA) is not required. However, notwithstanding the letter in regard to the EIA regulations, it is not necessary for me to consider this matter in any further detail as it would not affect the outcome of the appeal.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew Bremford INSPECTOR