



Appeal Decision

Site Visit made on 31 August 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2021

Appeal Ref: APP/K0235/W/21/3275594

1A Dean Street, Bedford MK40 3EQ

- 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 GPDO).
 - The appeal is made by Dr Jasvir Lidhar on behalf of MJS Homes Ltd against the decision of Bedford Borough Council.
 - The application Ref 21/00426/CPNO, dated 11 February 2021, was refused by notice dated 8 April 2021.
 - The development proposed is change of use of office spaces to 4 no. residential flats with car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and had the effect of amending and simplifying the system of Use Classes. Even so, Class O of Schedule 2, Part 3 of the GPDO refers to the B1(a) Use Class that was formerly in place. I shall determine the appeal on this basis. Indeed, the Council's determination was applied for in advance of the relevant 31 July 2021 deadline set out under Class O.

Main Issue

3. Whether or not the proposal would be permitted development under Schedule 2, Part 3, Class O of the GPDO.

Reasons

4. As set out under paragraph O.1(b) of the GPDO, development is not permitted by Class O if the building was not used for a use falling within Use Class B1(a) (offices) on 29 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. It has been suggested that the Council was only entitled to consider the application (to determine if prior approval was required) against the various conditions that are laid out at paragraph O.2(1) of the GPDO, and thus not against the requirements of paragraph O.1(b).
6. However, paragraph W(3) of the GPDO is clear that an application to determine if prior approval is required may be refused where, in the opinion of the local

planning authority, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in Part 3 that are applicable to the development in question.

7. I accept that the appellant could, outside of the prior approval process, potentially seek to establish the lawfulness of an existing use at the site. Nevertheless, it remained within the Council's remit at post-validation stage (as the determining local planning authority) to challenge the scheme's eligibility to comply with the requirements of paragraph O.1(b), or, for that matter, any other condition, limitation or restriction specific to Class O (other than exempted paragraph O.2(1)(e)).
8. Upon internal inspection, I observed the presence of a relatively limited range of materials being stored on a seemingly informal basis at ground floor level. Even so, I experienced the building to be, for the most part, vacant. The remains of a former trade counter made up part of a predominantly open-plan ground floor whilst, at first floor, a series of smaller rooms accessible off a central corridor were in existence.
9. It is the appellant's position that, when last in use, the premises consisted of officing on both the ground and first floors supplemented by an ancillary retail element provided by the trade counter. Nevertheless, limited supporting information has been submitted in the interests of clearly substantiating this position. On the other hand, summary valuations¹ of the property originating from the Valuation Office Agency have been submitted by the Council. These indicate the existence of warehousing and retailing at ground floor, and of officing at first floor.
10. In accordance with my own on-site observations, such a combination of previous uses is feasible. Indeed, the composition of the property's first floor offers a layout and environment that would lend itself to office occupation. Meanwhile, the building's predominantly open-plan ground floor, served by a large roller-shuttered main delivery point and a limited array of other openings, is a space that would realistically be well suited to accommodating warehousing/storage operations in addition to some retailing activities (via the trade counter).
11. Whilst Valuation Officers would not tend to be trained or skilled in planning matters, the submitted valuation information still offers a relevant insight into recorded operations at the property. Particularly in the absence of persuasive evidence to the contrary, the summary valuations and my own on-site observations indicate that a mix of uses were likely in existence at the site on 29 May 2013, or when the building was last in use if before that date.
12. I thus find that insufficient information has been provided to establish that the most recent use of the building fell within Use Class B1(a). The proposal does not therefore represent permitted development under Schedule 2, Part 3, Class O of the GPDO.

¹ for the periods 1 April 2010 to 31 March 2017 and 1 April 2017 to 23 July 2021

Other Matters

13. The provisions of paragraph O.2(1) require the local planning authority to assess the proposed development based on several different matters. However, this is only necessary where development is permitted. This is not the case here. It is therefore unnecessary for me to consider the merits of the proposal based on these matters.

Conclusion

14. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR