



Appeal Decision

Site visit made on 1 March 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/D2320/W/21/3286159

Brindle Mill, Bournes Row, Brindle, Preston, Lancashire, PR5 0DR

- 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 Gaintime Properties Ltd against the decision of Chorley Borough Council.
 - The application Ref 21/00366/P3PAJ, dated 24 March 2021, was refused by notice dated 18 May 2021.
 - The development proposed is the change of use from offices to 8 no. self-contained apartments.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the appellant on the application form differs from the name on the appeal form. The agent has clarified that the applicant and the appellant are Gaintime Properties Ltd. I have proceeded with the appeal on this basis.
3. Both the Council's and appellants evidence refers to paragraph O.1(a) indicating that development is not permitted by Class O if the building is on article 2(5) land and an application under paragraph O.2(1) in respect of the development is received by the local planning authority on or before 30 May 2019. This was revoked on 31 May 2019, and this is therefore not relevant.
4. Similarly, paragraph O.1(c) was revoked in 2016, relating to the use of the building was begun after 30 May 2016, I have therefore not referred to this in my decision. However, in accordance with condition O.2(b) any application for prior approval with respect to Class O must be made on or before 31 July 2021¹. In this case, the application was dated 24 March 2021.
5. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order). Relevant to this appeal, the Use Class B1(a) was replaced by Class E, in Part A of Schedule 2. The Regulations included transitional provisions until 31 July 2021, retaining the effect of permitted development rights based on the classes that were in place on 31 August 2020. The changes do not, therefore, change the basis for the determination of this appeal.

¹ The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021.

Main Issue

6. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (GPDO), and in particular paragraph O.1(b).

Reasons

7. Class O of the GPDO permits a change of use from a building and any land within its curtilage from a use falling within Class B1(a) (offices) to a use falling within Class C3 (dwellinghouses). Development is not permitted where the building was not used for the Class B1(a) (offices) use 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 (O.1(b)).
8. Various classes of permitted development, including Class O of the GPDO are subject to limitations as to the previous use of the building, sometimes on specified dates, to ensure this was the last use of the building and indeed it was a lawful use. This is a question of fact to be established on the evidence base.
9. The Council contend that no evidence has been provided to clearly demonstrate that the site has been used as a separate and distinct planning unit within Class B1(a) (offices) within the required timeframes and, therefore, there exists a reasonable degree of doubt as to whether the appeal site (the building and its curtilage) would have been used solely as an office within the applicable time frames.
10. The appeal site comprises of an existing two storey building with the immediate surroundings of the site being within a mixed use of both residential and industrial /commercial uses. The site location plan indicates that the appellant (blue land) owns the land to the west and south in use as the timber yard for Mike England Timber Co Ltd. The site history of the appeal building is limited, with a recent planning application² granted for installation of new windows.
11. The appellants planning statement, which accompanied the application contends that following a site inspection and further research, the site has been used as offices, not just in connection with Mike England Timber Co Ltd but also for other businesses, with the floorspace leased over extended periods. Current occupants include Marie Curie, for fundraising offices. It also states that it is used as an office for a local sweet and chocolate gift company, but there is no evidence to support this.
12. The appellants evidence at appendix A includes a statutory declaration, of which the appellant confirms the property was purchased in 2007. It states that since 2008 it has been used as self-contained offices with numerous tenants. The declaration states that *'the offices have been leased to Mike England Timber. Other long-term occupants have included Marie Curie Cancer Care and Kaemingk Ltd'*.
13. Notwithstanding, the statutory declaration, the supporting evidence, including the planning statement and statement of case raises some ambiguity in regard to the ownership, connection and use of the building with Mike England Timber.

² 21/00106/FUL

Although, the appellant indicates that Mike England Timber began renting the upstairs office space in December 2007, I have no further evidence or facts for clarification as to the extent, particularly as appendix F, email dated 18 May 2021, indicates that the 'site' has been used ancillary to Mike England Timber.

14. Furthermore, I have not been provided with any evidence of any lease agreements which were set out in the statutory declaration or the nature of the business of Kaemingk Ltd. It is not clear on the extent of occupation of the building, whether that be self-contained or those uses formed a separate planning unit, and if this use was abandoned at some point. The appellants statement of case also states that the building was last leased out as office space in 2016 but does not identify to whom or for what purpose.
15. At appendix E of the appellants' statement of case, business rates bills have been provided. These identify the property description as being '*Offices and premises*'. However, these bills are only dated for a 12-month period each, one dated in 2016 and the other 2020. This only clarifies that office accommodation was in use during the application timeframe, and not the limitation timeframes, which is confirmed in the statement of case. I also note that the bill for 2016 is not addressed to the appellant, albeit it has the same correspondence address. It also appears from the evidence an analysis of the rateable value of the first-floor office was only undertaken and became effective in 2017.
16. Although the appellant has submitted evidence, this is very limited, and it is not conclusive on the timescales and use of the building as a whole, or whether it had become separate and distinct planning units within the building, having regard to a 'building' includes 'part of a building'. At the time of the site visit, and from observations, there were many areas of the building either underutilised or vacant from any occupier. Marie Curie offices appeared to be only a small, contained element on the ground floor. Consequently, I consider there is insufficient evidence to adjudge the planning unit, having regard to paragraph W.(3)(b) of the GPDO.
17. The appellant has raised concerns in respect of the Council's handling of the application, be that at is may, it would be a matter for the Council at that time if they required further evidence. Nevertheless, in the GPDO, paragraph W.(3) advises that an application 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 establish if the proposals comply with any conditions, limitations or restrictions specified as being applicable in that Class.
18. On the basis of the evidence before me, insufficient evidence has been provided to demonstrate that on the balance of probability the appeal building was not solely in office use, Class B1(a) on 29 May 2013 or when it was last in use before this date. I cannot therefore be satisfied the proposal is permitted development and as such I must find it is not. Therefore, the proposal would not comply with the express terms of permitted development set out in Schedule 2, Part 3, Class O of the GPDO, particularly paragraph O.1(b).

Other Matters

19. I have had regard to the appeal decisions³ which both the Council and the appellant have drawn to my attention. Insufficient information has been provided on these schemes, so I cannot be sure that they represent a direct parallel to the appeal scheme particularly with regard to the requirement to meet the permitted development trigger dates of the limitations. Furthermore, it appears in some of these cases it related to the conditions of prior approval matters in O.2(1). In any case, I have determined the appeal on its own merits, and on the facts of the evidence base before me.
20. Given my conclusion above, there is no need for me to consider the prior approval matters including whether there would be adequate natural light in all habitable rooms of the proposed dwellings or the impact of noise from commercial premises on the intended occupiers of the development, as it is not necessary and would not alter the outcome of the appeal.

Conclusion

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

K A Taylor

INSPECTOR

³ 325668, 3263893, 3217413, 3249190