



Appeal Decision

Site visit made on 15 March 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Appeal Ref: APP/V4250/W/21/3286278

44-46 Railway Road, Leigh WN7 4AT

- 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 SNG Architecture Ltd against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/21/92045/PDO, dated 1 July 2021, was refused by notice dated 21 September 2021.
 - The development proposed is described 'It is proposed to create 7 high quality residential apartments, with associated Bicycle and Refuse/recycling amenity to the rear of the property. Planning permission for the required external alterations will be sort, following the Approval of the principle of the change of use'.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 for the change of use to 7 apartments at 44-46 Railway Road, Leigh WN7 4AT in accordance with the application Ref A/21/92045/PDO, dated 1 July 2021, and the details submitted with it pursuant to Schedule 2, Part 3, Class O of the GPDO, subject to the following additional conditions:
 - (1) The development hereby permitted shall not be occupied until a scheme of internal sound insulation between the party walls with the adjoining ground floor commercial uses has been submitted to and approved in writing by the local planning authority. The approved sound insulation works shall be completed before the development hereby permitted is occupied and be retained thereafter.
 - (2) The development hereby permitted shall not be occupied until a scheme for the secure storage of 7 bicycles has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how the bicycles will be securely stored, including the construction materials and finish of any outbuilding proposed. The approved secure cycle storage shall be completed before the development hereby permitted is occupied and be retained thereafter.

Preliminary Matters

2. Notwithstanding the description of the development set out in the banner above, which is taken from the application form, it is clear from the plans and accompanying details before me that the development comprises the change of use to 7 apartments. I have therefore amended the description of the development accordingly in my decision.

3. The application form states that the site address is 44 Railway Road, Leigh, WN7 4AT. Nonetheless, it is clear from the submitted plans and accompanying details, including the Council's decision notice and the appeal form, that the address is 44-46 Railway Road, Leigh WN7 4AT. I have therefore used this address in the banner heading and my decision as this is more accurate.
4. The name of the applicant is given as Cubic Architecture and Design Ltd in the original planning application forms, but the appellant's details are specified as SNG Architecture Ltd in the submitted appeal forms. The appellant's statement of case confirms that the appellant is SNG Architecture Ltd and I have therefore used this name in the banner heading.

Procedural Matters

5. Application Ref: A/21/92045/PDO for the change of use of a property argued to be B1(a) use to C3, the subject of the appeal, was made on 1 July 2021. The Council's decision notice specifies that this application was made under Schedule 2, Part 3, Class J of the GPDO ('Class J'). However, Class J was introduced via Statutory Instrument 2013/1101, albeit with temporary effect until 30 May 2016 and thus is no longer applicable.
6. 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 that set out that when determining any prior approval application made in respect of protected development on or before the 31st July 2022, the GPDO will continue to apply as if amendments made by the Order had not been made. This is subject to Transition 5(1)(c) of statutory instrument 2021/814 which states that 'protected development' is land or a building which, immediately before 1 August 2021, was used for a purpose which made the land or building eligible for the previous permission (i.e class B1).
7. Paragraph O.1.(b) of the GPDO also sets out that the change of use of a building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) would not be permitted if the building was not used for a use falling within Class B1(a) (Offices) of the Schedule to the Use Classes 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.

Background and Main Issue

8. Prior approval was previously granted at this site for the change of use of B1 offices to C3 dwellings in 2016 (Ref: A/16/82618/PDO). A further application, which I am informed remains undetermined, was submitted in 2020 for the conversion of 2 dwellings to 7 flats with alterations to the external elevations (Ref: A/20/88847/FULL).
9. The Council consider that the previous prior approval (Ref: A/16/82618/PDO) has been implemented, that the appeal building is no longer in a B1 (a) office use, and that its most recent lawful use is as C3 dwellings. On this basis, it considers that the proposal would fail to comply with paragraph O1.(b) of Class O of the GPDO.

10. Therefore, the main issue is whether the property was lawfully in use as B1(a) (Offices) on the relevant dates of 1 August 2021 and 29 May 2013.

Reasons

11. The Council's case relies to a substantial extent on the basis of the existing floor plans that were submitted with the undetermined planning application (Ref: A/20/88847/FULL) and the description of the proposed development which refers to the conversion of 2 existing dwellings. The plans show ground and first floor self-contained flats.
12. The Council's statement of case also includes a number of historic images that show external works to the front of the appeal building. These works include brickwork and the insertion of 2 doors and 2 windows, which the Council assume were completed in 2018. The Council considers that this information demonstrates that the previous prior approval (Ref: A/16/82618/PDO) has been implemented, and that the property is no longer in office use.
13. The lack of a notification that the development was completed within a period of 3 years of the previous prior approval date (Ref: A/16/82618/PDO) is not a determinative factor in whether a change of use has been implemented. Nonetheless, the appellant also states that the test of whether the units are dwellinghouses should be that set out in the case of *Gravesham*¹. That is, whether they have the distinctive characteristic of being able to afford to those who used them the facilities required for day-to-day domestic existence.
14. I have no substantive reason to disagree with this and I am also mindful of the approach in the case of *Impey*², where Lord Justice Donaldson said that "a change of use to residential development can take place before premises are used in the ordinary and accepted sense of the word. The question arises as to how much earlier (than actual use) there can be a change of use, it may be that the test is whether they are usable, but it is a question of fact and degree". He proposed that the physical state of the premises is very important, but not decisive, that their actual use, or intended use, or attempted use are important but not decisive, and that these matters have to be looked at in the round.
15. To determine the date of a change of use of a building to a dwellinghouse, I consider that regard should therefore be had to two factors, neither of which is decisive. These are when the building provided viable facilities for living, with regard to the Gravesham characteristics of a dwellinghouse, and when the use actually commenced.
16. My site observations confirmed that whilst external works to the front of the building had been carried out, the existing plans for the undetermined application Ref: A/20/88847/FULL are inaccurate. I noted that the property had been stripped out, and was more or less a shell, with no furnishings, fittings or facilities such as bathrooms, kitchens, floor coverings or lighting. It is vacant and there is little substantive evidence before me to question the appellant's claim that it has been unoccupied since the previous prior approval application. Although some internal works had been carried out, the 2 adjoining properties were not self-contained as it was still possible for me to access both of them from inside the building.

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

² *Impey v SSE & Lake District SPB* [1981] JPL 363, [1984] 47 P&CR 157

17. In light of the above, and when looked at in the round, the building does not offer the facilities required for day-to-day domestic existence and is not properly habitable or capable of being used as a dwelling house in its current condition. As a matter of factor and degree, I therefore find that its use as a C3 dwelling house has not commenced.
18. On the basis of the evidence before me, it therefore follows that the lawful use of the property on the relevant dates of 1 August 2021 and 29 May 2013 was a B1 (a) (Office). As such, I 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 and the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has raised no objection on these grounds, and I have found no reason to conclude otherwise.

Conditions

20. Paragraph W (13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. As such, I consider that it is necessary to impose conditions for secure cycle storage and internal noise insulation schemes in the interests of promoting sustainable modes of transport and the living conditions of future residents. However, I have reworded these conditions to meet the tests of precision and to ensure that they are not unduly restrictive.

Conclusion

21. I therefore conclude that the proposed development would accord with the requirements for development permitted under Class O of Schedule 2, Part 3 of the GPDO and that the appeal should be allowed and prior approval be granted. In granting approval the appellant should note that the GPDO requires at paragraph O.2 that the development must be completed within a period of 3 years starting with the prior approval date.

Mark Caine

INSPECTOR