



Appeal Decision

Site visit made on 8 August 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal Ref: APP/U5360/W/22/3291885

Better Properties Ltd, 129 Stamford Hill, Hackney, London N16 5TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Better Properties Ltd against the decision of London Borough of Hackney.
 - The application Ref 2021/1699, dated 27 May 2021, was refused by notice dated 10 September 2021. The development proposed is change of use of the first floor office (Use Class B1 / E) at 129 Stamford Hill, London N16 5TW to a residential use as six dwellings (Use Class C3), under Schedule 2, Part 3, Class O of the General Permitted Development Order (GPDO) 2015 (as amended).
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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 (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.
3. Additional information has accompanied the appeal. This includes a copy of a lease for the building which seeks to overcome concerns in the refusal notice. This represents new information. An amended drawing is also included, labelling rooflights as indicative. The appeals procedural guide makes it clear that 'the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'¹.
4. Nevertheless, that additional information does not fundamentally alter the scheme in terms of its design and internal arrangement, while the details submitted seek to demonstrate that the proposal satisfies the terms of Class O. Whilst I appreciate that some of the information is fairly technical in nature, the Council have had sight of it and had the opportunity to comment. I have therefore assessed the appeal based on the additional information.

¹ Annex M, M.2.1, The Planning Inspectorate Procedural Guide, Planning Appeals – England, August 2019

Background and Main Issue

5. 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).
6. Paragraph O.1(b) sets out that development is not permitted by Class O 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.
7. The LPA's position is that there is insufficient evidence to demonstrate that the building was in use for offices on or before 29 May 2013 in accordance with paragraph O.1(b) and thus cannot benefit from the permitted development right.
8. Therefore, the main issue is:
 - whether the proposal would be permitted development, having regard to whether the requirements of Schedule 2, Part 3, Class O of paragraph O.1(b) of the GPDO would be met.

Reasons

Use of the building

9. The appeal building comprises a large retail store at ground floor level and office accommodation within part of the first floor. During my site inspection the offices were occupied and in use.
10. The appellant confirms that Better Properties Ltd occupy the first floor and have used the space for offices since 2009. This, according to the appellant, is confirmed by the lease which is dated 29th September 2009. Internal drawings of the area covered by the lease are also included and they appear to match those accompanying the application.
11. Upon closer inspection of the lease, 'Paragraph 2. Demise' indicates that rents and covenants specified in the document will be for a term of three years from 29th September 2009. According to those terms the lease expired in September 2012. Therefore, its provisions did not cover or extend to the date specified by the GPDO (i.e. 29 May 2013) for the building to be in use as offices.
12. I am mindful that Better Properties Ltd were still at the time of this appeal the tenants of the first-floor offices. Therefore, it may be logically implied that their occupation of the building for office use continued following the expiration of the lease in 2012. However, I cannot be certain that was the case without any reliable documentary evidence detailing a subsequent lease or proof of its renewal and subsequent occupation as offices on the date specified by the GPDO.
13. The Local Planning Authority may refuse an application, under paragraph W of the GPDO, where the developer has provided insufficient information to establish whether the development complies with any conditions, limitations or restrictions in Part 3. The burden of proof is on the applicant and in this case, on the basis of the evidence before me, I find that there is uncertainty as to whether the site complies with the requirements of the GPDO Schedule 2,

Part 3, Class O of paragraph O.1(b). Accordingly, the proposal would not be permitted development by Class O.

Other Matters

14. Paragraph O.2 (1) sets out that development under Class O is permitted subject to an application to the local planning authority for a determination as to whether their prior approval is required in relation to a number of conditions. This includes O.2(1)(e) which relates to the provision of adequate natural light in all habitable rooms. The Council considers that the proposed development would not make provision for adequate natural light in these terms, and included this reason in its refusal notice.
15. Given my conclusion on the main issue, 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, as it is not necessary and would not alter the outcome of the appeal.
16. The Council's concerns also relate to the provision of new rooflights which are not permitted by Class O. Were I allowing the appeal, the rooflights could be excluded through a planning condition. However, I have determined that the appeal would not be permitted development in the first instance.

Conclusion

17. For the reasons given above, I conclude that the proposal is not permitted development and that the appeal should be dismissed.

R.E Jones

INSPECTOR