



Appeal Decision

Site visit made on 10 February 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/J1725/W/21/3286271

The Old School, Unit 4, Harbour Road, Gosport PO12 1BG

- 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 Mr Heer against the decision of Gosport Borough Council.
 - The application Ref 21/00378/P3JGDO, dated 9 July 2021, was refused by notice dated 9 September 2021.
 - The development proposed is described as 'Conversion of the space within the curtilage of the building to two 1 person, 1 bedroom flats. All habitable rooms to have natural light and ventilation.'
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for change of use of offices to dwellinghouses, subject to limitations and conditions.
3. Where an application is made for a determination as to whether prior approval is required for development falling under Class O, paragraph W(3) provides that the local planning authority may refuse an application where, in the opinion of the 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 that are applicable to such permitted development.
4. In this case there is dispute between the parties as to whether the proposal would be permitted development, with particular regard to paragraph O.1(b) which 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.
5. The main issue is whether the proposed development would constitute permitted development under the provisions of Class O.

Reasons

6. There is no planning permission or lawful development certificate which confirms the lawful use of Unit 4 on 29th May 2013. As such, for the purposes of this appeal I have considered this matter based on the evidence provided.

7. The main parties agree that Unit 4 comprises two floors which were previously occupied by 'The Old School Kitchen Company Limited', whose main activities are described as kitchen designers and installers. The evidence would suggest they occupied Unit 4 between 17 October 2009 and 15 September 2020, thereby covering the date in question.
8. Both the ground and first floor of Unit 4 share an entrance from the street and are then accessed by separate doors, one leading into the ground floor space and the other to the staircase and first floor. The first floor comprises a single room and has no welfare facilities, and a small kitchen and WC are present on the ground floor, suggesting their uses were interlinked. Together with their joint occupancy and shared entrance, it is clear that the two floors operated together as a single unit.
9. Evidence of business rates have been provided for periods from 1 April 2010 to 31 March 2017 and from 1 April 2017 onwards. These summarise the use of the Unit as 'store and premises' but provides a further break down suggesting it comprised a store on the ground floor and works office above, of equal floor area. Given the floor space is described as being equally proportioned between the store and office uses, in isolation this would not suggest that the use of either floor was necessarily ancillary to the other.
10. Photographs of the inside of the Unit have been supplied which are undated but the appellant describes were taken at the time the previous occupiers were moving out, being around September 2020. The photographs show that the Unit was not in active use at that time. As such, while the main part of the ground floor appears to provide welfare facilities including a dart board, it has not been evidenced that this was the case seven years earlier in 2013, as required. Given their date, I attach little weight to these photographs as evidence of the use on 29th May 2013.
11. The floor plans provided show the internal layout of the Unit and suggest interconnectivity between the ground and first floor. However, the source of these plans is not stated, and these do not amount to evidence as to how the parts of the Unit were used in 2013. As such I ascribe the floor plans little weight as evidence of the use on 29th May 2013.
12. During my site visit I observed that the Unit remains empty and its facilities, including the WC and kitchen on the ground floor, remain as shown on the supporting drawings. However, while I observed features of a former office on the first floor and shelving units on parts of the ground floor, I accept that the Unit has been empty for a notable period, and what I saw does not necessarily reflect how the Unit operated in 2013.
13. In addition to the above evidence, the appellant has provided comments relating to the likely ways in which the previous occupiers used the Unit and the appellant considers that the ground floor provided ancillary storage used in connection with the first floor. However, similarly this is not supported by any firm evidence to which I can ascribe significant weight.
14. Given the above analysis of the evidence before me, the main evidence relating to the use on 29th May 2013 are the records of business rates. However, alone this does not support the assertion that the whole of the Unit was in office use, as it notes the ground and first floor to be used for different purposes, of which half was an office.

15. Consequently, there is insufficient evidence to adjudge that the building was used as offices on 29th May 2013, and it cannot be concluded that the proposal would fall within the provisions of Schedule 2, Part 3, Class O of the GPDO.
16. In turn, there is no purpose in going on to consider whether to grant prior approval for the matters listed.

Conclusion

17. For the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR