



Appeal Decision

Site visit made on 31 October 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Appeal Ref: APP/E5900/X/23/3322508

1 Westferry Circus, London E14 4HD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Geraint Flowers of University of Wales Trinity Saint David against the decision of the Council of the London Borough of Tower Hamlets.
 - The application, Ref PA/22/02152, dated 13 October 2022, was refused by notice dated 22 November 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as the proposed use for office use Class E(g)(i) by the University of Wales Trinity Saint David as set out on Plan 221173/E7 for part second floor (east), 1 Westferry Circus.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Procedural Matter

2. The Council failed to attend the accompanied site visit at the arranged time. The site visit was therefore carried out on the basis of an access required site visit. I inspected the ground floor of Nos 1 and 2 Westferry Circus, the first floor of No 2 and the second floor of No 1 Westferry Circus. Works are currently underway at No 2 to lay it out for university use including the fitting of a new staircase between the ground and first floor.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the proposal was well-founded.

Reasons

4. The appeal relates to part of the second floor (east) of a multi storey commercial building situated on the corner of Westferry Road and Westferry Circus. From the plans and other information submitted and at my site visit I saw that the majority of the floorspace in the building, including the second and upper floors, is accessed from an entrance way labelled as No 1. From the hallway of No 1, it is necessary to pass through security and security barriers to access the lift area. Some of the upper floors are vacant but some of the space is let to various businesses.

5. Planning permission and an LDC have recently been granted for the University of Wales Trinity Saint David (the university) to occupy part of the ground and all of the first floor of the building for teaching purposes. This area is accessed from the previous creche area in a unit known as No 2 Westferry Circus. The use falls within Class F1 Learning and Non-Residential Institutions of the Town and Country Planning (Use Classes) Order 1987¹ as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations).
6. The current proposal seeks to ascertain that the university's administrative office function would fall within the Class E Commercial, Business and Service use that exists for part of the second floor. The Council's view is that it would not as it would be ancillary to the use of the ground and first floor teaching space and as such, would fall within Class F1.
7. There is no disagreement between the parties that the authorised use of the second floor falls within Class E. In addition, as it appears there are no restrictions on Class E in respect of this building, it is agreed that planning permission is not required to move between the various uses covered by Class E. This is set out in the Explanatory Memorandum (the EM) to the 2020 Regulations, paragraph 7.3.
8. The principle point at issue is whether the proposed use would be ancillary to the educational use or whether it would fall within Class E. In considering this point it is necessary to have regard to *Burdle*² as the Council's case appears to be that the proposal would be a material change of use amounting to development. *Burdle* is the leading case in these matters and the tests within it start with the unit of occupation and turn on the concept of physical and functional separation.
9. The plans show that the second floor (east) would be separated from the remaining second floor area by a new wall. Access would be via a lift area that serves all the upper floors and access to the lift area at ground level would be via the entrance into No 1 Westferry Circus. The teaching space for the university is accessed via No 2 Westferry Circus, a separate entrance from No 1 that enables students to make use of parts of the ground floor and all of the first floor. I am therefore satisfied that the university's administrative support would be within an identifiable unit of occupation which would be physically separate from the teaching space.
10. The proposed use is also functionally separate from the teaching space. The proposed uses such as finance, payroll, marketing etc are uses that are carried out in an office whereas the provision of education is a distinctly different activity carried out in lecture halls and tutor rooms and can include facilities such as libraries. The university administrative support does not have to be directly located above the teaching space; indeed, it could be located in a different building as often occurs in a campus set up or where several university activities are spread across a city centre. The only reason the proposed use is above the teaching space is because the university has the opportunity to lease the second floor, hence their application. For these reasons therefore I am satisfied that the second floor (east) is a separate planning unit within the building which is separate from the teaching space.

¹ The Use Classes Order

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

11. I have not been given a copy of the Council's legal advice and they are not obliged to provide it. However, there is no explanation from the Council for how they reached the conclusion that the university administrative support use of the second floor would be an "ancillary" use "to the primary use". As the appellant points out, the Courts have held that uses can only be ancillary to a primary use within *a single planning unit* (my emphasis). In this case there are two distinct planning units not a single planning unit. The Council's position is therefore unclear.
12. The Government's position is clear though, as set out in the EM. Class E is described as a "broad" new use class covering commercial, business and service uses. It recognises that a building may be in a number of uses concurrently and businesses need greater freedoms to adapt to changing circumstances.
13. It seems to me that Westferry Circus is an example of such a building. The application plans show a layout that is typical of a modern office/administrative use with open plan desk areas, individual desks within small rooms and groups of desks within larger rooms plus various size meeting rooms and a staff relaxation area. I find that if the second floor east is laid out as shown on these plans, then the use would fall within Class E(g)(i), which is an office to carry out *any* operational or administrative function. Such a use is not limited in any way in the Use Classes Order and therefore the proposal would be lawful.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use of the property as offices, falling within use Class E(g)(i), by the University of Wales Trinity Saint David, as set out on Plan 221173/E7 for part second floor (east), was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me on the section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 13 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use described in the first schedule falls within Class E(g)(i) of the Town and Country Planning (Use Classes) Order 1987 as amended. By virtue of section 55(2)(f) of the Town and Country Planning Act 1990, such a use would not involve development under the Act and thus no enforcement action could be taken against it.

Signed

D Fleming

Inspector

Date 3 November 2023

Reference: APP/E5900/X/23/3322508

First Schedule

The proposed use for office use, Class E(g)(i), by the University of Wales Trinity Saint David as set out on Plan 221173/E7 for part second floor (east).

Second Schedule

Land at 1 Westferry Circus, London E14 4HD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 3 November 2023

by **D Fleming BA (Hons) MRTPI**

Land at:

Reference: APP/E5900/X/23/3322508

Scale: not to scale

