



Appeal Decision

Site visit made on 22 November 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2022

Appeal Ref: APP/U1620/W/22/3302265

Cedar House, Spa Road, Gloucester GL1 1XL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by AEW UK REIT PLC against the decision of Gloucester City Council.
 - The application Ref 21/00825/JPA, dated 2 July 2021, was refused by notice dated 28 February 2022.
 - The development proposed is application for prior approval for the change of use from Offices (Class B1 a) to Dwellings (Class C3)
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Decision

1. The appeal is allowed and prior approval granted under the provisions of Schedule 2, Part 3, Class O of the Town & Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the change of use from Offices (Class B1 a) to Dwellings (Class C3) at Cedar House, Spa Road, Gloucester GL1 1XL in accordance with the application Ref: 21/00825/JPA, dated 2 July 2021, the details submitted with it pursuant to Schedule 2, Part 3, Class O of the GPDO.

Preliminary Matters

2. The description of development in the banner heading above is taken directly from the Council's Decision Notice. This more accurately reflects the development proposed than that set out in the planning application form. Accordingly, I have determined the appeal on the Council's description of development.

Background and Main Issue

3. Class O of the GPDO permits a change of use of 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) subject to a number of criteria.
4. Paragraph O.1 of the GPDO sets out the circumstances when development would not be permitted. Of these, the Council cites O.1.(b), that the building was not used for a use falling wholly 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. However, in respect of this matter, the dispute is not the date it was last used, but whether the whole of the site can be considered as falling within Class B1(a) (Offices).

5. In view of the above, the main issue is whether the property was lawfully in use as B1(a) (Offices) on 29 May 2013.

Reasons

6. The appeal property is a four-storey building with a basement, located in the Spa Conservation Area. The building is currently occupied by the Department of Works and Pensions (DWP) as offices in the upper floors, with a Job Centre Plus in the ground and part of the first floor.
7. The Council accept that the majority of the building is used for B1(a) Offices but have indicated that the ground and part of the first floor operating as a Job Centre Plus would not fall within the same office use. The appellants set out that the use of the building is not a mixed use, rather that the B1(a) office use is the predominate use of a single planning unit, with the Job Centre Plus being ancillary¹. It is contended that the Job Centre Plus is ancillary in terms of the floorspace it occupies and in respect of how it operates, with the service and functions it offers being closely associated with the office use of the DWP.
8. In view of the above, the matter in dispute is whether the Job Centre Plus use can be considered as ancillary to the B1(a) offices, and does not amount of a mixed use of the site. The Offices, in addition to the updated Job Centre Plus, have been operating since 2006. From what I saw on site on Tuesday morning (11:30am), the offices and Job Centre Plus were still being used in this manner. In support of the case, the appellants have provided existing plans, a brochure from Buchanan Bond on the particulars of the building, a Land Use Note by Rapleys, valuation and rating information from HM Revenues and Customs and a legal opinion from Charles Streeten of Francis Taylor Building.
9. Based on the evidence before me, and from what I saw during my site visit, I am of view that Cedar House is a single planning unit. Aside from the Job Centre Plus branding, there was no clear separation of the two uses externally or internally. There was one building, a single vehicle access and a car parking area. Furthermore, the offices above were accessible from the floors occupied by Job Centre Plus and vice versa. Cedar House is also leased and occupied by the DWP, which operate both the offices and Job Centre Plus.
10. As such, in my judgement, Cedar House is a single planning unit, rather than two clearly distinct or separate planning units. Furthermore, the floorspace occupied by the Job Centre Plus is 20% of the building, with 80% of the building being used as Offices falling within B1(a). The evidence before me also indicates that Job Centre Plus is more of a public brand, and as a service and function it has been operated by the DWP for over 10 years. Accordingly, based on Cedar House being a single planning unit, the size of the floorspace Job centre Plus occupies and the working relationship with the DWP, the Job Centre Plus is an ancillary or subsidiary use to the predominate B1(a) office use at Cedar House.
11. I have had regard to the Council's Officer Report and accept that the two uses are different and can operate independently of one another. However, this is not the only factor when considering whether a material change of use has occurred. For instance, consideration of the site as a single planning unit is key in my judgement, along with a clear predominate use and a close association

¹ Ancillary defined on the Planning Portal as 'a subsidiary or secondary use or operation closely associated with the main use of a building or piece of land.'

with the main use. There are a number of instances where buildings operate in a similar manner, such as Civic Offices of Councils, which are normally classed as B1 Offices despite offering a number of public service functions. Furthermore, factory units often have portions of floor space dedicated to offices and trade retail space but are not deemed to be a mixed or sui generis use.

12. Cedar House is a single planning unit, and the Job Centre Plus is ancillary to the B1 (a) office use. Based on the evidence before me, the scale and function of the Job centre Plus would not amount to a material change in the use of the planning unit. As such, Cedar house would comply with O.1.(b), which requires the building to be used for a use falling wholly within Class B1(a) (Offices) of the Schedule to the Use Classes Order on (i) 29 May 2013.

Other Matters

13. The provisions of Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015) also require the local planning authority to assess the proposed development on the basis of the transport and highway impacts of the proposed development; the contamination risks on site; the impacts of noise from commercial premises on the intended occupiers of the development and flooding risks on the site. The Council, or any consultees, have not raised any concerns in respect of these prior approval matters and I see no reason to take a different view.

Conditions

14. Paragraph W (13) of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has not suggested any additional conditions to be imposed. I find no reason to conclude otherwise. The application was submitted for prior approval to the Council prior to 31 July 2021, and any prior approval granted under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO is subject to the condition that it must be completed within a period of 3 years of the prior approval date.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

M. P. Howell

INSPECTOR