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## Appeal Decisions

Site visit made on 23 September 2015

**by R W Allen B.Sc (Hons) PGDip MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 November 2015**

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### **Appeal A Ref: APP/D5120/W/15/3035866**

#### **67 Manor Freehold Farm, Parsonage Lane, Sidcup, Kent DA14 5EZ**

- 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 Mr David Smith (Cliffside Developments) against the decision of The London Borough of Bexley.
  - The application Ref 14/01940/PRIOR, dated 2 October 2014, was refused by notice dated 1 December 2014.
  - The development proposed is for a change of use from B1(a) to residential use.
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### **Appeal B Ref: APP/D5120/W/15/3035873**

#### **67 Manor Freehold Farm, Parsonage Lane, Sidcup, Kent DA14 5EZ**

- 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 Mr David Smith (Cliffside Developments) against the decision of The London Borough of Bexley.
  - The application Ref 15/00350/PRIOR, dated 5 February 2015, was refused by notice dated 2 April 2015.
  - The development proposed is use of units A, C and D within the building to residential use.
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### **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Preliminary Matters**

3. The Council did not attend the site visit. However I was able to gain access to the building, and I undertook the site visit unaccompanied. I was able to gain a sufficient view of the site to enable me to properly consider the proposal.
4. The Council's decision notice for Appeal B states the application reference number as '14/01940/PRIOR', which is the same reference for Appeal A. I have taken this to be a typographical error, and I have assumed the correct reference for Appeal B is that provided by the Council in their statement.

### **Main Issues**

5. The main issue for Appeal A is whether the building falls within a B1(a) office use such that it would benefit from permitted development rights afforded

under Class O of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (Class O).

6. The main issue for Appeal B is whether Units A, C and D are within a B1(a) office use such that they would benefit from permitted development rights afforded under Class O of the GPDO.

### **Reasons**

7. The appeal site concerns a detached barn-like building located within the open countryside. From the plans before me and from my observations at my site visit, the building is subdivided into Units A to F, and I observed that they were used for various purposes including office, industrial, and for car repair and storage.

### *Appeal A*

8. Prior approval is sought for the change of use of the whole building from B1(a) office to residential. To comply with Class O of the GPDO, the building would need to have been in B1(a) office use on 29 May 2013. The appellant has accepted that Unit B is not in B1(a) office use and there is no evidence that it was previously. Consequently, there is nothing to indicate that the building as a whole was in B1(a) office use on the relevant date. Furthermore, at the time of my site visit, it was clear that Units E and F were not in B1(a) office use and nor is there anything to clearly indicate that they were on the relevant date. Therefore, the Appeal A proposal cannot benefit from permitted development rights under Class O.
9. The appellant has argued that Units A, C and D are in B1(a) office use. From what I was able to see on my site visit, it appeared that Units A and C were in B1(a) office use. However, Unit D was clearly not, and nor is there any substantive evidence to indicate that Unit D was in B1(a) office use on 29 May 2013. Consequently, Class O rights cannot apply to Unit D.
10. It is not sufficient for Units A and C to have been in B1(a) office use on the relevant date, in order for Class O to apply. In order to comply with Article 3(5) of the GPDO, the B1(a) office use must also have been lawful. In this case permission for the '*continued use of existing building for use within Use Class B1, with provision of parking spaces*' was granted in 2005 subject to several conditions (Ref: 05/03525/FUL). The Council considers that conditions requiring specific actions in relation to landscaping, parking and manoeuvring, land contamination and the restoration of land used for vehicle storage were not complied with and, as a result, that the B1(a) office use is unlawful. In contrast, the appellant has doubts over the way the conditions were worded and therefore disputes their validity and effect.
11. Nevertheless, I consider that there is very considerable doubt over whether these conditions have been complied with and whether the B1(a) office use can reasonably be regarded as being lawful. Although it would be open for the appellant to seek a Lawful Development Certificate, at this stage it has not been demonstrated that the B1(a) office use of the building as a whole or of any individual units within it would comply with Article 3(5). Consequently, it would not be appropriate for me to consider a split decision in relation to Units A and C.

12. In addition, it should be noted that Article 3(4) of the GPDO states that nothing in the Order permits development contrary to any condition imposed by any planning permission. In this case, the 2005 permission was subject to condition 4 which seeks to prevent the use of the building for anything other than B1. Had it not been for the substantive concerns I have already outlined above, I would have sought the views of the parties on this matter and on its potential relevance to the outcome of both appeals.

### *Appeal B*

13. This appeal relates solely to Units A, C and D. I have already concluded that one of these units was not in B1(a) office use on the relevant date and that there is considerable doubt over whether any B1(a) office use of any part of the building can reasonably be regarded as being lawful. Consequently, it follows that the permitted development rights under Class O do not apply and Appeal B must also fail.

### **Other Matters**

14. The Council also refused Appeal A on inadequate information submitted relating to transport and highways, and for Appeal B on the contamination risks of the site. As I have found that the lawful use of the B1(a) office units are unproven, it has not been necessary for me to reach a conclusion on these matters.

15. It would appear that the Council reached its decision for Appeal A on the 56<sup>th</sup> day. However, this does not necessarily mean that the appellant was notified of the decision on that day. I have taken into account the decision reached by the Inspector dealing on a notification issue on a different site (Ref: APP/Z3825/A/14/2224715). However, given that I have concluded that the proposals before me would not benefit from permitted development rights under Class O, it has not been necessary for me to consider this specific point any further.

### **Conclusion**

16. For the reasons given above I conclude that the Appeals A and B should be dismissed.

*Richard Allen*

INSPECTOR