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# Appeal Decision

Site visit made on 4 April 2017

**by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI**

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

**Decision date: 11 April 2017**

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## **Appeal Ref: APP/B1740/X/16/3162423**

### **Coles Yard, Stuckton SP6 2HE**

- 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 Mockbeggar Properties Ltd against the decision of New Forest District Council.
- The application Ref 16/10736, dated 25 May 2016, was refused by notice dated 16 September 2016.
- 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 use as C3 residential.

### **Summary of Decision: The appeal is dismissed.**

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#### **Procedural matters**

1. The proposed use is described on the appeal form as use of 7 residential units. Because this is more precise I shall use this description in this decision.
2. The Council granted planning permission for re-development of the appeal site on 8 February 2012 (Council reference 11/97198). This approved a development consisting of office, business, storage units and car parking (Class B1 and B8) and the demolition of the existing building. I saw that this development has proceeded but is unfinished. I refer to this as the 2012 pp.

#### **Reasons**

3. An application for a Lawful Development Certificate (LDC) is determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. The onus of proof lies firmly on the appellant and to succeed the evidence submitted must be sufficiently precise and unambiguous.
4. In this case the appeal is considered against the provisions of the 2015 GPDO<sup>1</sup>. Consideration of the planning merits of the proposed development is outside the scope of this appeal. The 2012 pp was for a mixed use but the Council appears to have assessed the proposed change of use as if the use of the site was in or proposed to be in office use only. The appellant has not challenged this approach and I use it in my decision<sup>2</sup>. I am satisfied that there will be no

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<sup>1</sup> The Town and Country Planning (General Permitted Development) Order 2015 as amended

<sup>2</sup> The GPDO does not grant deemed permission for a change of use of land or buildings in mixed B1 and B8 use. Thus if the site was in mixed use there would be no right to convert to residential use without express planning permission

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- prejudice in my doing so because it appears the site has been marketed for office use.
5. Class O of Schedule 2, Part 3 of the GPDO sets out the circumstances in which deemed permission is granted for development consisting of a change of use of a building from a use falling within Class B1(a) (offices) to a use falling within Class C3 (dwellinghouses).
  6. Development is not permitted if it exceeds the limitations pertaining to location and is not in use as a B1(a) office at the relevant date. Development under Class O is also subject to the condition that before the beginning of the development the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required.<sup>3</sup>
  7. The appellant says that it would be beneficial to change the use of the building and there is no demand for office space in this location particularly as there is insufficient parking space available and the access roads are narrow. He also says that the Council has a need to provide more housing in the District. But as I have noted above the merits of the development are not relevant to this application for an LDC and I can give no weight to the suggested benefits.
  8. According to the Council the subject building was neither complete nor occupied in August 2016. This is not disputed by the appellant and indeed the two letters dated October 2016 concerning the marketing of the building suggest that it remained un-let in October 2016<sup>4</sup>. Consequently on the balance of probability it was not in use as Class B1(a) offices as at 29 May 2013.
  9. Paragraph O.1 (b)(i) of Part 3 states that development is not permitted if the building in question was not used for a use falling within Class B1(a) of the Schedule to the Use Classes Order on 29 May 2013. Consequently, the proposed change of use, by reason of the limitation of Schedule 2, Part 3, Class O paragraph O.1 (b)(i) of the GPDO, does not benefit from deemed consent granted by the development order.
  10. Even if the proposal site had been assessed as a change of use from B1 (offices) and B8 (storage) to residential use the outcome would have been the same. This is because the GPDO does not confer deemed permission for the change of use of a site in mixed B1 and B8 use.

### **Decision**

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use as 7 residential units was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision. Consequently the appeal is dismissed.

*Sukie Tamplin*

INSPECTOR

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<sup>3</sup> In respect of transport, highways, contamination risks and flooding issues

<sup>4</sup> As noted above the building appeared unfinished and unoccupied at the time of my site visit.