
Appeal Decisions

Site visit made on 9 May 2016

by L Gibbons BA (Hons) MRTPI

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

Decision date: 06 September 2016

Appeal Ref A: APP/L1765/W/15/3141585

Sutton Springs, Bullington Lane, Sutton Scotney, Winchester, Hampshire SO21 3RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Nigel Jackson against the decision of Winchester City Council.
 - The application Ref 15/02206/FUL, dated 28 September 2016, was refused by notice dated 18 December 2015.
 - The application sought planning permission for erection of agricultural barn (retrospective) without complying with conditions attached to planning permission Ref 05/00924/FUL, dated 21 July 2005.
 - The conditions in dispute are Nos 1 and 2 which state that:
 - *No 1. No further internal or external alterations, shall be undertaken to the building without the prior written consent of the Local Planning Authority.*
 - *No 2. The building hereby approved shall be used only for agricultural purposes and shall at no time be used to provide residential accommodation.*
 - The reasons given for the conditions are:
 - *No 1. To ensure the building remains agricultural in appearance in order to protect the character of the area.*
 - *No 2. To accord with the relevant Development Plan policies regarding appropriate uses for new buildings within the countryside.*
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Appeal Ref B: APP/L1765/W/15/3141592

Sutton Springs, Bullington Lane, Sutton Scotney, Winchester, Hampshire SO21 3RA

- 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 Q of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr Nigel Jackson against the decision of Winchester City Council.
 - The application Ref 15/02160/PNACOU, dated 22 September 2015, was refused by notice dated 16 November 2016.
 - The development proposed is change of use from Agricultural to a use under Class C3 of the Ground Floor only of a barn (Part of building definition as per s 336 TCPA). The curtilage joins that of the existing dwelling.
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Decisions

1. Appeal A is allowed and the planning permission Ref 05/00924/FUL for the erection of agricultural barn (retrospective) at Sutton Springs, Bullington Lane, Sutton Scotney, Winchester SO21 3RA granted on 21 July 2005 by Winchester
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City Council, is varied by deleting condition 1 and substituting it with the following condition and subject to the other conditions imposed therein.

- 1) No further external alterations, shall be undertaken to the building, without the prior written consent of the Local Planning Authority.
 - 2) The building hereby approved shall be used only for agricultural purposes and shall at no time be used to provide residential accommodation
 - 3) No floodlighting/external lighting whether freestanding or affixed to an existing structure shall be provided on the site at any time without the prior written consent of the Local Planning Authority.
2. Appeal B is dismissed.

Application for costs

3. An application for costs was made by Mr Nigel Jackson against Winchester City Council. These applications will be the subject of a separate Decision.

Procedural Matters

4. For ease of reference I refer to the different appeals as Appeal A and Appeal B in the decision letter as set out in the headings. The appeals differ in respect of their proposals and I have dealt with each appeal on its individual merits but to avoid duplication I have considered the appeals together in this decision.

APPEAL A

Background

5. The appeal site is located within a trout farm. In 2005, the Council granted planning permission for the agricultural barn which had already been built. Planning permission included two conditions. Condition 1 relates to preventing further internal and external alterations to the building without prior written consent of the Council. Condition 2 relates to the use of the building for agricultural purposes and that it should not be used for residential purposes. The appeal is seeking the removal of conditions 1 and 2.
6. Paragraph 206 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. The appellant states that the conditions do not serve a useful planning purpose and that they are unreasonable. In addition, that condition 2 in particular does not meet with the criteria set out in paragraph 206 of the Framework.

Main Issues

7. The main issues in this appeal are
 - i) the effect of removing condition 1 on the character and appearance of the area; and,
 - ii) Whether condition 2 is reasonable and necessary having regard to national and local planning policy concerning development in the countryside.

Reasons

Character and appearance

8. The appeal site is located within a rural area. There are other buildings within the wider area including some businesses and a number of houses. However, the area has a strong rural character with sporadic development to the east of Bullington Lane. The appeal site is positioned some distance from the road albeit views of the site are very limited in summer. It would be possible to see the site in winter, but these would only be glimpsed views when travelling by car.
9. The barn is close to a dwelling which partially screens the appeal building from view on the approach via the driveway. In the immediate area, I note there are some domestic features in the immediate surroundings as a result of the existing dwelling including hardstanding and parking areas to the rear. However, ponds, trees, hedges and a small field to the north and east of the appeal building provide a strong rural setting to the site and its surroundings.
10. The development plan for the area now consists of the Winchester District Local Plan Part 1 Joint Core Strategy (JCS) and the saved Policies of the Winchester Local Plan Review (LPR) 2006. The Council refer to Policy DS1 of the JCS seeks to achieve high standards of design and sensitivity to character; setting and rural heritage. Policy MTRA4 of the JCS relates to development in the countryside and sets out that development proposed in accordance with the policy should not cause harm to the character and landscape of the area. The Council have also referred to saved Policy H3 of the LPR, however this only refers to development within built up area boundaries.
11. The reason given for condition 1 refers to the need to retain the agricultural appearance of the building. The barn is not very large and currently sits within a confined site with a fence for the field on its north and east boundaries. In respect of the appearance of the first floor, in 2009 the Council approved an application for the retention of velux and dormer windows. To my mind, these particular features contribute to the appearance of the building being similar in style to the existing dwelling. However, the ground floor is partly open but can be enclosed by shutters. The ground floor is therefore more akin to an agricultural appearance.
12. I accept that the barn would be capable of being converted to residential use without additional changes to the internal layout in terms of any prior approval application. I also understand that it is connected to essential services. Nevertheless, I consider that additional external changes to the barn would have the potential to lead to a very domestic appearance which I consider would have a harmful effect on the rural character of the area. It seems to me that condition 1 affords the Council the opportunity to review development that might otherwise be permitted to ensure that it would have an acceptable impact on the rural setting of the building.
13. The condition refers to internal changes to the building and the Council have referred to the planning history of the site in relation to the unauthorised use of the first floor for residential accommodation. However, the Council have not pointed to any harm that would occur from internal changes to the character and appearance of the area. I consider that the reference to internal changes

is therefore not necessary in the interests of the character and appearance of the area.

14. For the reasons given above I conclude that to remove condition 1 would cause harm to the character and appearance of the area. It would be in conflict with Policies DS1 and Policy MTRA4 of the JCS.

Development in the countryside

15. In respect of condition 2, the appellant refers to the National Planning Policy Framework and the Planning Practice Guidance which indicates that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
16. The appellant refers to the sustainability of location not being an appropriate reason for rejecting a prior approval application by reason of its location and siting. This is not the subject of this proposal. Since the determination of the original planning application in 2005 legislative changes have resulted in Class Q of the GPDO. Without the need for full planning permission this permits the conversion of agricultural buildings through the prior approval process. Nevertheless it is clear that the Government continues to seek to include a number of safeguards to promote sustainable development.
17. The Framework at paragraph 55 seeks to promote sustainable development where it will enhance or maintain the vitality of rural communities. It also sets out that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Policy MTRA4 of the JCS sets out the circumstances in which development in the countryside will be permitted. This includes development which has an operational need for a countryside location such as for agriculture. Whilst affordable housing is an exception under policy MTRA4, the appellant indicates that the intention would be to use the building for market housing.
18. Policy DS1 sets out the development strategy and principles for the area. This seeks to focus development at settlements. I consider that the policies DS1 and MTRA4 are broadly consistent with the Framework. Having regard to the development plan objectives, it is appropriate for the Council to have retained the opportunity in this case to consider development which might otherwise be considered in order to ensure that it does not have an unacceptable impact on the countryside setting.
19. The appellant considers that the condition is not relevant to the development permitted. However, at the time of the grant of planning permission development had already been completed and was for an agricultural barn. The condition relates to the building which is the subject of this appeal. Condition 2 therefore seems to me to be relevant to the development permitted.
20. In terms of whether condition 2 is enforceable, the appellant refers to the condition being unlawful and refer to *Allnatt London Properties Ltd v Middlesex County Council (1964) 15 P & CR 288*. However, from the information provided by the Council, I understand that the condition has been tested as part of an enforcement notice and High Court Appeal. From what I have seen and read, I see no reason to disagree with this.

21. I accept that condition 2 does not specifically refer to the GPDO. Nevertheless, by using the word 'only' within the condition this to my mind clearly means 'solely' or 'exclusively'. This is further supported by the preceding words 'shall be used'. On this basis, I consider that the wording is precisely defined and that there is a clear restriction against any other use and implicitly restricts development to that set out in the condition. It goes beyond what was originally permitted.
22. I have been referred to High Court and Court of Appeal judgements¹. These relate to circumstances in which the Use Classes Order was not specifically referred to within conditions. The question in the majority of the cases was that they were reasonable and fairly and reasonably related to the permitted development. I have also been provided with an extract from an appeal decision at Reliance Way, Oxford which refers to the need to have explicit reference to the GPDO. However, I have not been provided with the full decision or the details of that case and as such, I cannot be certain it is comparable to the circumstances before me.
23. I accept that the barn is no longer needed in relation to the trout farm. The proposal would make a very small contribution to the supply of housing land. However, this contribution would be very small and I give this factor very limited weight. I acknowledge that there is a dwelling very close to the appeal site. Nonetheless, this is an agricultural workers dwelling and as such it is not directly comparable to the circumstances before me.
24. The appellant refers to the condition placing an unjustifiable and disproportionate burden and that the government wish to encourage the conversion of agricultural buildings to residential use. I am not persuaded on the evidence before me that this is case.
25. For the reasons given above, I conclude that condition 2 is reasonable and necessary having regard to national and local planning policy concerning development in the countryside. The removal of the condition would be in conflict with Policies DS1 and MTRA4 of the JCS.

Conclusion

26. I have found that to remove condition 1 would cause harm to the character and appearance of the area. I have also found that Condition 2 is reasonable and necessary. However, the wording in relation to internal changes in condition 1 is not necessary.
27. The Council indicated that the timeframe relating to condition 3 of the original planning permission relating to landscaping and maintenance has now finished and accordingly I have not imposed this. However, the Council refer to condition 4 in relation to lighting on the site and I agree that this would be necessary in the interests of the character and appearance of the area and in respect of the nearby residential use.
28. For the above reasons, Appeal A is allowed but only in respect of varying condition 1.

¹ City of London Corporation v Secretary of State for the Environment [1972] P & CR 159; Dunoon Developments v Secretary of State and Poole Borough Council (1993) P & CR 101; Carter Commercial Developments Ltd v Secretary of State for the Environment [2002] EWHC 1200 (admin)

APPEAL B

Main Issues

29. The main issues are whether the proposed change of use constitutes permitted development pursuant to Class Q(a) of Part 3 of Schedule 2 to the GPDO having regard to the following factors:

- i) Whether the site was solely in agricultural use, as part of an established agricultural unit, within the applicable timeframes; and
- ii) Whether conditions 1 and 2 of the original planning permission is effective in removing the permitted development rights under Class Q of Part 3 of Schedule 2 to the GPDO.

Whether solely in agricultural use

30. The GPDO at paragraph Q1.(a) applies to buildings that were solely in agricultural use on or before 20 March 2013. It is the Council's view that the land within the curtilage of the building has not been solely in agricultural use. This in particular relates to the first floor of the building which was in residential use from 2009.
31. In 2015 there was an appeal² relating to the change of use of the building to a dwelling house. In that decision, the Inspector found that regardless of whether the residential use of the first floor was lawful or not the building, based on the evidence before them, the whole building was not in agricultural use on the required date. The Inspector did find that the wider site was in agricultural use on that date.
32. No definition of site is provided within the GPDO. However, the definition of a building in Article 2 of the GPDO includes part of a building. Therefore it would be possible to convert a particular part of a building from agricultural use to a dwelling. Moreover, the appellant has confirmed that the change of use of the ground floor only is being applied for and this is clearly set out in the description of development. In respect of the curtilage I have considered this in relation to the lawful use of the building which is agricultural.
33. Therefore for the purposes of this appeal I consider the 'site' and 'building' in question is that which is proposed to be converted under the provisions of Class Q namely the ground floor. The Council do not raise any concerns in respect of the ground floor. Although the ground floor was last used for fish processing in September 2013, it was in use on the relevant date in March 2013. In the light of the information before me, I conclude that the relevant part of the building was part of an agricultural trade or business on 20 March 2013.

Whether conditions 1 and 2 of the original planning permission is effective in removing the permitted development rights under Class Q of Part 3 of Schedule 2 to the GPDO

34. The Council refused the application partly on the basis that condition 1 and condition 2 attached to the 2005 planning permission only allows for agricultural use. This argument is made in the light of Article 3(4) of the GPDO which states that '*nothing in this Order permits development contrary to any*

² APP/L1765/W/15/3005316

condition imposed by any planning permission granted or deemed to be granted under Part III of the Act otherwise by this order’.

35. Condition 1 relates to preventing further internal and external alterations to the building without prior written consent of the Council. However, although the reason given for the condition refers to the agricultural appearance of the barn, I find that there is nothing within the condition which would exclude the change of use of the building. I have also had regard to the fact that no alterations to the barn are proposed.
36. Condition 2 reads *'The building hereby approved shall be used only for agricultural purposes and shall at no time be used to provide residential accommodation'*. The appellant argues that there are High Court and Court of Appeal decisions³ which indicate that condition 2 does not restrict the relevant permitted development rights and that amongst other things conditions must be clearly expressed and imposed and should not be implied.
37. I have also been referred to the Dunoon case, Royal London Mutual Insurance and Rugby Football Union. These cases relate to the exclusion of the Use Classes Order (UCO). The appellant indicates that the conditions in question in the majority of the cases were reasonable and fairly and reasonably related to the permitted development.
38. The appellant refers to an appeal decision in Reliance Way, Oxford. The extract from that decision indicates that as there was no explicit reference to the GPDO in the condition that it did not conflict with the GPDO. Consistency between decision makers is important. However, I have not been provided with a copy of that decision and I am not aware of the wording of the condition or the arguments that were put to that Inspector. Therefore the weight I give to it has to be tempered accordingly.
39. I accept that condition 2 does not specifically refer to the GPDO. Nevertheless, by using the word 'only' within the condition this clearly means 'solely' or 'exclusively'. This is supported by the preceding words 'shall be used'. On this basis, I consider that the wording is precisely defined, clearly expressed and that there is a clear restriction against any other use, including residential accommodation. I do not agree that the condition simply describes the use which has been permitted. I conclude that condition 2 of the original planning permission is effective in removing the permitted development right under Schedule 2, Part 3, Class Q of the GPDO.

Conclusion

40. I have concluded that the building was part of an agricultural trade or business on 20 March 2013. I have also concluded that condition 1 is not effective in preventing a change of use.
41. However, I have found that condition 2 of the original planning permission is effective in removing the permitted development rights under Class Q of Part 3 of Schedule 2 to the GPDO. The proposal would therefore be contrary to the GPDO under Article 3(4). The prior approval regime is therefore not available

³ Carter Commercial Developments Ltd v Secretary of State for Environment [2001] EWHC 1200 (admin); City of London Corporation v Secretary of State for Environment [1972] P & CR 159 and Carpet Décor (Guilford) Ltd v Secretary of State for Environment [1981] JPL 806.

in this case and planning permission would be needed for the proposed change of use. For the above reasons, I conclude that Appeal B should be dismissed.

L Gibbons

INSPECTOR