The Planning Inspectorate

Appeal Decision

Site visit made on 15 November 2016

by Mike Hayden BSc DipTP MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/P1940/W/16/3157269
Barn off Red Lion Lane, Sarratt, Rickmansworth, Hertfordshire WD3 6BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class Q of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr & Mrs K. Baker against the decision of Three Rivers District Council.
- The application Ref 16/0535/PDA, dated 15 February 2016, was refused by notice dated 12 May 2016.
- The development proposed is prior approval for a change of use of agricultural building to a dwelling house (Class C3) and associated works.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether or not the change of use for which prior approval is sought is prohibited by Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

3. The appeal property is a timber barn situated in the corner of an open field to the north east of the village of Sarratt. It was granted planning permission in 1991 (Ref 8/539/91) subject to a condition (3) which states that:

   "The building hereby permitted shall be used solely in connection with the agricultural use carried out on the site and for no other purpose without the prior permission in writing of the Local Planning Authority."

4. Notwithstanding the permitted development rights granted under Schedule 2 the GPDO, Article 3(4) of the GPDO says that:

   "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order."

5. The issue relates to whether or not condition 3 attached to planning permission Ref 8/539/91 is sufficient to exclude the rights permitted under Class Q of the GPDO for the change of use of the appeal property from agricultural building to dwelling house as provided for under Article 3(4) of the GPDO.

6. To this end I have carefully considered the relevant case law and appeal decisions referred to by the parties as to the effect of the condition. I note that the *Carpet Décor (Guilford) Ltd v Secretary of State for the Environment and Guilford Borough Council* [1982] and *Dunoon Developments v SoS for the Environment and Poole Borough Council* [1992] judgements support the appellants' view that the condition should make explicit reference to the GPDO in order to restrict development permitted under the GPDO. I am also aware that the Planning Practice Guidance (paragraph ID 21a-017-20140306) advises that conditions restricting permitted development rights should be precisely defined by reference to the GPDO.

7. However, at the time of the 1991 permission the relevant clauses of the GPDO permitting change of use of buildings from agriculture to residential were not in existence, so it would be unreasonable to expect the condition to have referred to them. In such circumstances, the ability of a condition to exclude consent granted by the operation of the GPDO without specific reference to the GPDO is recognised in the more recent judgement in *Dunnett Investments Limited v SSCLG and East Dorset District Council* [2016], so long as the words used in the condition are unequivocal in doing so.

8. Condition 3 is unambiguous in stating that the appeal building should be used for agricultural purposes alone. The words "solely" and "for no other purpose" are emphatic in limiting the use of the building to only the stated purpose. It is clear this does not include a use for residential purposes, without the prior permission of the local planning authority.

9. It is suggested by the appellants that this tailpiece to the condition, namely the words "without the prior permission in writing of the Local Planning Authority" could be construed as including an application for prior approval under the GPDO. However, this could not have been the meaning of the phrase "prior permission" as envisaged by the Council at the time, since in 1991 the current prior approval provisions of the GPDO were not in existence. Further, an application for notification of prior approval under Class Q of the GPDO is expressly not an application for planning permission for a change of use from agriculture to residential which has already been granted by Article 3(1) of the GPDO. Therefore, the requirement in condition 3 for the prior permission of the local planning authority to use the building for a purpose other than agriculture could not include a prior approval notification. Rather it must amount to a requirement to seek planning permission from the local planning authority.

10. Turning to the reason for condition 3, this is clearly stated as *"in order to protect the amenities of the Metropolitan Green Belt"*. I recognise that the Green Belt is not included within the Article 2(3) categories of land exempted from permitted development under Class Q. However, the government continues to attach great importance to Green Belts, the essential characteristics of which are their openness and permanence, as set out in paragraph 79 of the National Planning Policy Framework (the Framework). The purposes of the Green Belt are set out in paragraph 80 of the Framework, one of which is to safeguard the countryside from encroachment. Whilst paragraph 90 of the Framework states that the re-use of buildings in the Green Belt is not inappropriate development, this is on the proviso that it preserves the openness of the Green Belt and does not conflict with the purposes in including land in the Green Belt.

11. In the absence of condition 3, planning permission for the change of use of the appeal building to a dwelling would be permitted under Class Q of the GPDO. The prior approval scheme under paragraph Q.2 circumscribes what the local planning authority can consider if the appeal proposal amounted to permitted development. The considerations would be limited to transport and noise impacts, contamination and flood risks, the practicality or desirability of the building's location and siting and its design and appearance. None of these would allow the local planning authority to assess the effect of the proposal on the openness or purposes of the Green Belt as required under paragraph 90 of the Framework. Therefore, I find that there is a clear and reasonable planning purpose for the imposition of the condition.

Conclusion

12. For the reasons given above, I conclude that condition 3 on the 1991 planning permission is sufficient to exclude any change of use of the appeal property that would otherwise be permitted by Class Q of Part 3 to Schedule 2 of the GPDO. Consequently, the change of use for which prior approval is sought is prohibited by Article 3(4) of the GPDO. Therefore, the proposal does not amount to permitted development, but is development for which an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. Accordingly, the appeal is dismissed.

M Hayden

INSPECTOR