
Appeal Decision

Site visit made on 17 January 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 14 February 2017

Appeal Ref: APP/D3505/W/16/3156779

Little Barnes Nursery, Main Road, Chelmondiston IP9 1EE

- 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 John Malster against the decision of Babergh District Council.
 - The application Ref B/16/00694/OFDW, dated 16 May 2016, was refused by notice dated 15 July 2016.
 - The development proposed is change of use of class B1(a) offices to class C3 dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. There is no description of the proposed development on the application form. I have therefore taken the description of the proposed development from the Council's decision notice.

Main issues

3. The main issue is whether the proposal would constitute permitted development under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), having particular regard to whether the appeal building can be considered to have or have had a B1(a) use.

Reasons

4. Paragraph O, of the GPDO, permits development consisting of 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). The application for prior approval for the proposed change of use of the building from Class B1(a) to Class C3 was refused by the Council for the reason that it considered that the building does not have a B1(a) use and that as such the proposed change of use is not permitted development.
 5. The appeal building is located on a plot of land within the wider Little Barnes Nursery site. The building was constructed subsequent to planning consent Ref B/03/01935. The decision notice for this planning consent describes the development as *'erection of a detached outbuilding for use as office and mess*
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rooms'. The decision notice sets out a number of planning conditions imposed on the consent, including Condition No 2 which states that 'the hereby approved building shall not be used at any time other than for purposes ancillary to the nursery use of Little Barnes Nursery'.

6. Having regard to the description of the abovementioned planning consent, the consented use of the building is not wholly for office purposes. Moreover, Condition No 2 restricts the use of the building to purposes ancillary to the nursery use of the land it is sited on. The building therefore assumes the dominant use of the wider nursery site rather than a separate B1(a) use. Furthermore, Article 3(4) of the GPDO states 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'*.
7. The appellant suggests that the abovementioned condition as worded would no longer apply if the nursery ceased trading, given that the condition relates specifically to Little Barnes Nursey. Nevertheless, there is no substantive evidence before me to demonstrate that the nursery has ceased trading. Moreover, the planning consent and any associated conditions would continue to run with the land even if trading ceased or the nursery was to change name or ownership.
8. The appellant also suggests that the condition is general in its wording and does not go far enough to restrict permitted development rights given that it does not refer specifically to the GPDO or to the Use Classes Order. Moreover, that it does not meet the tests for planning conditions as required by Paragraph 206 of the National Planning Policy Framework. However, the condition sets out in no uncertain terms that the building is to be used only for purposes ancillary to the wider nursery use. In my judgement, the wording of the condition is therefore precise and clear in its intent and as such, could be enforced by the Council. Moreover, it is relevant to the development, reasonable in scope and is likely to be necessary to enable the wider nursery use of the land to function effectively. The appellant offers no compelling evidence to the contrary. In addition, I have not been made aware of any overriding need for a dwelling in this particular location.
9. I therefore consider that the building is not wholly in office use, is ancillary to the wider use of the nursery site in any event and therefore does not have and has not had a separate B1(a) use. Consequently, I conclude that the proposal does not constitute permitted development under the provisions of Schedule 2, Part 3, Class O of the GPDO. Thus it cannot be addressed by the prior approval process and it is not necessary for me to consider any transport, contamination, flood risk or noise issues.

Other matters

10. I acknowledge that the building would not require any significant alterations to convert it to a dwelling. I also recognise that any future occupiers would be provided with an adequate level of external amenity space. However, these matters would not overcome the proposal's failure to meet the criteria set out in Schedule 2, Part 3, Class O of the GPDO such that it could not be considered as permitted development for assessment under the prior approval process.

11. I note that an interested party makes a brief reference to a recent planning consent for the conversion of the building to residential use. However, no further details of any such planning consent are before me and such a change of use had not occurred at the time of my site visit. As such, this matter has little bearing on my consideration of this appeal.

Conclusion

12. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR