
Appeal Decision

Site visit made on 27 February 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 8 March 2017

Appeal Ref: APP/P1133/W/16/3163943

Land north of Shameface Lane, Hennock, Bovey Tracey, Devon TQ13 9QH

- 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 P of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr S Curtis against the decision of Teignbridge District Council.
 - The application Ref 16/02427/NPA, dated 1 September 2016, was refused by notice dated 20 October 2016.
 - The development proposed is the change of use of a building and land in B8 use (storage or distribution) to a C3 use (dwellinghouse).
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO') for the change of use of a building and land in B8 use (storage or distribution) to a C3 use (dwellinghouse) at land north of Shameface Lane, Hennock, Bovey Tracey, Devon TQ13 9QH in accordance with the terms of the application Ref 16/02427/NPA, dated 1 September 2016, subject to the schedule of conditions in this decision.

Application for costs

2. An application for costs was made by Mr S Curtis against Teignbridge District Council, which is the subject of a separate decision.

Preliminary matters

3. I have used the description of development within the banner heading above as it is a more accurate description of the proposal than that used by the Council in their decision notice, which refers to the change of use of a building alone, and as it is more succinct than that given within the application form, which references relevant statute. The appellant's statement of case at appeal confirms that the proposal is for 'a dwelling house'.
4. Application Ref 16/02427/NPA followed two previous refusals by the Council to grant approval required under Schedule 2, Part 3, Class P of the GPDO.¹ For the avoidance of doubt, I have determined the proposal before me on its particular merits.

¹ Ref 16/00025/NPA and 16/01061/NPA.

Planning context and main issue

5. The Council refused permission on the basis that the vehicular access to the building and land proposed for conversion was not included within the application site as identified on the site location plan, entitled 'Case Reference: DNC/CURT-163-1', the sole plan related to the proposal. In their view had the access been included within the application site the residential curtilage proposed would exceed the footprint of the building in conflict with Schedule 2, Part 3, paragraph P.3(b) of the GPDO.
6. However the Council have subsequently confirmed via correspondence dated 1 February 2017 that 'in light of further information that has been submitted since the refusal of the application, the Council no longer wish to defend the reason for refusal'. The further information referred to here is planning appeal Ref APP/P113/W/16/3156167, which I shall reference subsequently.
7. Nevertheless for the sake of comprehensiveness, and as Hennock Parish Council made representations supporting the Council's original position, the main issue in this case is whether or not the proposal is permitted development with reference to the extent residential curtilage proposed and the requirements of Schedule 2, Part 3, paragraph P.3 of the GPDO.
8. The Council do not object to the proposal in other respects, subject to the imposition of appropriate conditions, including with reference to the effect of the proposal upon the Area of Great Landscape Value in which it is located and its proximity to the South Hams Special Area of Conservation (SAC). There is nothing in the information before me or as a result of my site visit to lead me to a different position regarding the other requirements of Class P.

Reasons

9. The proposal is for the change of use of a utilitarian storage building and an area around it as identified on the site location plan referred to above (hereafter referred to collectively as the appeal site). The appeal site falls within a wider parcel of land under the same ownership. This land is used for storage or distribution purposes, use class B8 as set out the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (the 'UCO').²
10. The wider parcel of land referred to above is a largely untended field which is partially overgrown with vegetation and which contains a significant number of trees. Its natural appearance means that it is consistent with, and reinforces, the verdant rural character of the area. It is served by an unconsolidated vehicular access, part rubble, which joins Shameface Lane, a narrow single track carriageway.
11. Neither the building nor appeal site are readily apparent in the landscape on account of the presence of trees within the appeal site, and as Shameface Lane and surrounding carriageways are characteristically enclosed by substantial Devon banks and hedgerows.

² The use confirmed via the Council's certificate of lawful use Ref 15/02866/CLDE.

12. Schedule 2, Part 3, Class P of the GPDO enables 'development consisting of a change of use of a building and any land within its curtilage' from B8 use to C3 use (dwellinghouses, as defined in the UCO). 'Curtilage' in this context is defined in paragraph P.3 of the GPDO.
13. The GPDO does not specifically require that vehicular access is included within the curtilage proposed via Class P. Instead curtilage is, in essence, defined as land 'immediately beside or around' a building. It is axiomatic that in many cases accesses may not be immediately beside or around a B8 building, and indeed that accesses may be described as such at certain points but not at others.
14. Moreover the provision of vehicular access to a highway required in connection with development permitted by the GPDO is enabled separately, subject to certain requirements, via Schedule 2, Part 2, Class B of the GPDO.
15. Consequently in my view 'curtilage' and 'access' should be seen as distinct terms.³ Indeed as both appear in separate elements of the GPDO, they are furthermore distinct from the provision of 'other services', as referred to in Schedule 2, Part 3, paragraph Q.1(i) and 'highways impacts' referred to in Schedule 2, Part 3, paragraph P.2, which are the substantive matters addressed in other appeals which the Council has brought to my attention.⁴
16. Vehicular access and spaces for parking and manoeuvring are not illustrated on the site location plan. I accept that given the rural location of the appeal site it is highly likely that future residents of the dwelling proposed would be reliant on the use of private vehicles. I therefore understand why the Council has sought clarification in this respect.
17. Whilst the curtilage proposed is modest, it would in my view offer some, albeit limited, space for parking and manoeuvring. Moreover the land surrounding the appeal site is within the appellant's ownership, and the access thereto is already capable of being used in connection with the established B8 use. There is no evidence before me to indicate that vehicular use of this access is unsafe, indeed it appeared to be largely consistent with the nature of many other vehicular accesses in the surrounding area.
18. There is furthermore sufficient open space sufficient for parking a number of vehicles and manoeuvring space within the land in which the appeal site falls so as to be able to enter and exit Shameface Lane in forward gear, without the need to materially reduce the natural features of the land. In this case, given the nature of the appeal site and its surroundings, I am therefore satisfied that the absence of detail in respect of access, parking and manoeuvring would not lead to adverse highways impacts in relation to vehicular movements or pressure for parking elsewhere.
19. However in the light of the legislative context set out above, matters of the provision of vehicular access and space for manoeuvring and parking are not

³ A finding consistent with that of the inspector in appeal Ref APP/P113/W/16/3156167 which has been brought to my attention by the appellant, although arrived at independently thereof.

⁴ Ref APP/H0928/W/15/3005842 and APP/X0415/W/15/3137742. Moreover I would note in respect of the former that the proposal was in relation to Class Q of the GPDO, and in that instance access arrangements were acknowledged to be unsuitable.

intrinsic to determining whether or not a proposal is permitted development. Such matters would either fall to the exercise of other permitted development rights, future applications for planning consent in the event that this is required, or would relate to matters outwith planning (such as easements).

20. I therefore conclude that the proposal is permitted development with reference to the residential curtilage proposed and to the requirements of Schedule 2, Part 3, paragraph P.3 of the GPDO.

Conditions

21. Schedule 2, Part 3, Class P, paragraph P.2 of the GPDO clarifies that the provisions of paragraph W of Part 3 of the GPDO apply to proposals via Class P. Paragraph W(13) of the GPDO sets out that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
22. Section 79 of the Town and Country Planning Act 1990 as amended empowers me to deal with appeals as if the application were made to me in the first instance. In the light of the above it is legitimate for me to consider imposing conditions, having taken account of the cases made at appeal in this respect.
23. As Schedule 2, Part 3, paragraph P.1(c) of the GPDO sets out that residential use enabled via Class P must begin on or before 15 April 2018, it is unnecessary to replicate this requirement via condition here. However, to ensure that the extent of residential curtilage adhered to the provisions of Schedule 2, Part 3, paragraph P.3 of the GPDO I have imposed a condition requiring compliance with the site location plan.
24. The appeal site falls nearby the South Hams Special Area of Conservation (the 'SAC'), an area protected on account of the value of its habitat and ecology pursuant to the EC Habitats Directive. Permission granted via development order for development which is likely to have a significant effect on a European site must not be begun until the developer has received written approval.⁵
25. The appellant's supporting Ecological Assessment recommends measures to safeguard ecology that may be affected by the conversion of the building and curtilage to residential use.⁶ The Council's officer report associated with application Ref 16/02427/NPA explains that, were it not possible to require compliance with the Ecological Assessment via condition, the Council would oppose the proposal.
26. The principal recommendations of the Ecological Assessment are that provided no external lighting is installed there is 'no perceived negative impact' on bats, and that a precautionary approach to development should be adopted in particular in relation to works affecting habitats that may be used by nesting birds, amphibians and reptiles.

⁵ As set out in Article 3(1) of the GPDO and Regulation 73(1) of the Conservation of Habitats and Species Regulations 2010.

⁶ Bat & Protected Species Survey, & Ecological Scoping Assessment', prepared by EcoLogic Consultant Ecologists LLP, dated March 2016.

27. Given the secluded rural location of the appeal site, it is reasonable to take the position that future occupants of the dwelling proposed may more readily seek to provide an environment that feels comfortable and safe through the installation of exterior lighting than would be likely to arise in connection with a storage and distribution facility. On this basis I therefore agree with the Council that in order to safeguard the wellbeing of bats, it is necessary to impose a condition preventing the installation of external lighting.
28. Class P of the GPDO enables only changes of use rather than operational development, and therefore relevant operational development proposed pursuant to the scheme here would require planning permission.⁷ There is no indication that the proposal would entail the loss of trees, shrubs and hedges.
29. There is similarly no evidence before me indicating that such existing features of the site are protected via planning requirements in connection with the extant B8 use thereof, notwithstanding that planning permission may be required and or other regulatory requirements engaged if their alteration is proposed.⁸ Consequently a condition preventing the loss of trees, shrubs or hedges fails the test of relevance to the proposal before me and indeed of necessity.⁹
30. In this context a condition requiring compliance with the Ecological Assessment is unnecessary. Given that certain measures are therein recommended to safeguard ecology in relation to works which do not form part of the proposal, such as the clearance of vegetation, and as future planning consents and other regulatory requirements may apply if such works are proposed, it is unnecessary to secure compliance therewith within the confines of this appeal.¹⁰
31. The Ecological Assessment further indicates measures that would provide for 'biodiversity enhancement'.¹¹ However there is no explicit provision in relevant statute to require such measures in respect of development brought forward via the GPDO, and indeed to do so via condition would in my view not be consistent with the basis of applications for prior approval, which is that the principle of the development has already been established.¹²

Conclusion

32. For the above reasons, and having taken account of all other matters raised, I conclude that the appeal should be allowed subject to the conditions below.

Thomas Bristow

INSPECTOR

⁷ Notwithstanding that certain development related to the extant building may not be development where it does not materially affect the exterior of the building, with reference to Section 55(2) of the Town and Country Planning Act 1990 as amended.

⁸ Including the relevant provisions of the Wildlife and Countryside Act 1981 as amended.

⁹ With reference to paragraph 206 of the National Planning Policy Framework.

¹⁰ Ibid.

¹¹ At section 7.6.

¹² As set out in Planning Practice Guidance Reference ID: 13-028-20140306.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with approved plan entitled 'Case Reference: DNC/CURT-163-1'.
- 2) No external lighting shall be installed in relation to the development hereby permitted.