
Appeal Decision

Site visit made on 11 April 2017

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/P1940/W/16/3164639

**Hertford Place, Denham Way, Maple Cross, Rickmansworth, Hertfordshire
WD3 9AB**

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter 'the GPDO').
 - The appeal is made by Mr James Brackenbury of Longmead Capital against the decision of Three Rivers District Council.
 - The application Ref 16/1445/PDR, dated 6 July 2016, was refused by notice dated 6 September 2016.
 - The development proposed is the change of use from office (use class B1a) to 84 residential apartments (use class C3).
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Decision

1. The appeal is dismissed.

Reasons

2. Class O of part 3 to schedule 2 of the GPDO makes provision for changes of use of Class B1a (offices) to Class C3 (dwellinghouses) subject to the criteria in paragraph O.1 and the conditions in paragraph O.2. It is not disputed by the parties that the development would accord with the criteria in paragraph O.1 and that those impacts of the development, which are required to be assessed by the Council under paragraph O.2, are considered acceptable.
3. The main issue therefore is whether conditions on previous planning permissions for the site preclude the proposed change of use from being permitted development. 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*".
4. Condition 2 on planning permission 8/710/86 and condition 1 on planning permission 8/38/87 are identical and state:

"The floor space the subject of this permission shall be used as offices and/or light industry (as defined in Classes II and III respectively of the Town and County Planning (Use Classes) Order (1972) and/or for the purposes of research and development and for no other purpose whatsoever without the prior permission in writing of the local planning authority."

5. The reason given in both cases was: *"Permission is granted having regard to the specific use described in the application and the existing uses of the building known as Hertford House and Hertford Place, and the local planning authority would wish to reconsider the position in the event of a change in circumstances."*
6. These conditions comprise three parts; the description of the permitted use, the exclusion of other uses, and the need to seek prior permission. With respect to the first two parts of the conditions, I do not consider that it is unclear whether they purport to restrict a change in the use of the land to other activities in the same use class or to uses in other classes. The conditions are unequivocal that the building can be used for light industry, research and development and no other purpose whatsoever and so in my view excludes all other uses whether within the same use class or in other use classes.
7. My view is supported by *Royal London Mutual Insurance Society Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 3597 (Admin) which found that the condition in that case, which identified specific retail items that were permitted, drew a distinction between acceptable Class A1 uses and unacceptable Class A1 uses. Furthermore, in *The Rugby Football Union v The Secretary of State for Local Government, Transport and the Regions* [2001] EWHC 927 it was stated that the words 'for no other use' had no other sensibly discernible purpose than to prevent some other use that might be permissible without planning permission. Also, with specific reference to the GPDO, *Dunnett Investments Limited v Secretary of State for Communities and Local Government* [2017] EWCA Civ 192, in paragraph 38 vii of the judgement, concluded that the condition, which in that case as well as this case before me include the words 'and no other purpose whatsoever', is *"a clear and specific exclusion of GPDO rights"*.
8. As such I consider the conditions are emphatic as to what uses they allow, and are not 'empty' as they go beyond merely reiterating the development granted planning permission. The cautious approach suggested by the appellant is therefore unnecessary.
9. Moreover I consider a reasonable reader of the conditions would expect that the permitted uses are only those identified in the conditions and in view of this clarity it would be contrary to the conclusions in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74 to suppose if uses other than those specifically identified in the conditions could be allowed.
10. With respect to the final part of the conditions, it is clear that prior permission in writing must be sought from the local planning authority. It does not specify what form of permission this is, and in this respect it differs from *Dunnett* which referred to "express planning consent from the local planning authority". However I do not consider this is critical. What *Dunnett* does confirm is that planning permission granted by the Secretary of State via the GPDO is distinct from a permission granted by the local planning authority. Though the conditions listed in paragraph O.2 of the GPDO do require the input from the local planning authority, the permission nonetheless derives from the Secretary of State.

11. I have considered the other cases referred to by the appellant, notably the appeal at Snell Farm, Salisbury¹ in which the Inspector was not persuaded that the condition, in that case, would exclude agreement through a prior approval application process. However whilst this is a relatively recent case, it pre-dates the judgement on Dunnett which takes the contrary view.
12. From my site visit it was clear that the site's context is not that of an industrial estate, and I note the consent for a hotel² on the adjacent land. Nonetheless, the reason for both conditions expressly includes the phrase "the local planning authority would wish to reconsider the position in the event of a change in circumstances". The circumstances in terms of policy, the site and its surroundings have significantly changed in the last 30 years and it is not unreasonable for the Council to wish to consider the current circumstances fully, which could not be done by a permission granted by the GPDO. The fact that the Council has not applied similar conditions to other consents for development locally does not necessarily mean they are content for the use of this building to be changed without having the opportunity to fully consider current circumstances. Consequently I consider the reason for the conditions is still relevant.
13. The suggested lack of demand for the building as offices, and the contribution the proposal could make to housing supply are not matters I need consider in this appeal.
14. As such condition 2 on planning permission 8/710/86 and condition 1 on planning permission 8/38/87 invoke Article 3(4) of the GPDO which prevents the proposed change of use of the existing building to residential apartments under Class O of part 3 to schedule 2 of the GPDO from being permitted development. Instead it is development for which an application for planning permission would be required. Such an application would be a matter for the Council to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. Accordingly, having regard to all other matters raised, the appeal should be dismissed.

Andrew Owen

INSPECTOR

¹ APP/Y3940/W/16/3142980

² Ref 07/1401/FUL