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## Appeal Decision

Site visit made on 5 June 2017

**by Robert Parker BSc (Hons) Dip TP MRTPI**

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

**Decision date: 28 June 2017**

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**Appeal Ref: APP/J9497/W/17/3168971**

**River View, Manor Mills, Exeter Road, South Brent, Devon TQ10 9JD**

- 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, as amended.
  - The appeal is made by Mr Raymond Tombs of Pack First Removals against the decision of Dartmoor National Park Authority.
  - The application Ref 0545/16, dated 5 October 2016, was refused by letter dated 5 December 2016.
  - The development proposed is change of use of office building (Class B1(a)) to residential use (Class C3).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO) (hereafter referred to as Class O) 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) of the Schedule to the Use Classes Order, to a use falling within Class C3(dwellinghouses) of the same order.
  3. Permission under Class O is conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval will be required as to the transport and highways impacts of the development; contamination risks on the site; flooding risks on the site; and the impacts of noise from commercial premises on the intended occupiers of the development. The application to the Authority was made on this basis.
  4. The development is also subject to a number of criteria which are set out in Paragraph O.1 under Class O. Proposals must meet these requirements in order to benefit from permitted development rights. Paragraph W(3) of Schedule 2, Part 3 to the GPDO states that an application may be refused where, in the opinion of the local planning authority, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development.
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5. The Authority has not issued a formal decision notice. However, I have treated its letter of 5 December 2016 as a refusal under Paragraph W(3) provisions.
6. In addition to identifying the building, the submitted plans include land within the red line. I have treated this area as being within the curtilage for the purposes of the application. It would therefore become residential curtilage in the event of prior approval being granted.

### **Main Issue**

7. The main issue in this case is whether the proposal constitutes permitted development under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

### **Reasons**

8. The change of use sought does not benefit from the provisions of Class O where, amongst other things, the building was not used for a use falling within Class B1(a) (offices) on 29<sup>th</sup> May 2013, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use (Paragraph O.1(b)). The Authority considers that the proposal would conflict with this limitation on the grounds that the dwellings would not be formed entirely of parts of the building that were in B1 office use on the prescribed date.
9. The building in question is relatively modern, having been granted planning permission in 2002. The decision notice described the development as "removal of sub-standard workshop and store and erection of replacement workshop and store". The owners subsequently enquired to the Authority about inserting offices on the first floor and were advised that permission would not be required.
10. The existing plans submitted with the appeal application show the ground floor of the building subdivided into three store rooms with a smaller storage area, five offices, staff room and toilets at first floor. This layout was in existence at the time of my site inspection, but the first floor was being used as a single dwelling unit. I have seen nothing within the evidence from either party to suggest that residential use is authorised. Nevertheless, a building which is in use as a dwelling, even as part of a mixed planning unit, would not enjoy permitted development rights under Class O.
11. According to the appellant, the building was constructed to provide an administrative base for Dince Hill (Holdings) Ltd. It is contended that the primary use on 29<sup>th</sup> May 2013 was for offices with ancillary file and archive storage and drawing office. I am told that a carpenter's workshop on part of the ground floor was vacated prior to that date.
12. There is no substantive evidence to indicate that the appellant had first-hand knowledge of the use of the building on the prescribed date. I am therefore reliant upon a statutory declaration from the Company Secretary of the firm which owned and occupied the site at the time. However, this document is not signed or dated. I am therefore unable to place any significant weight upon it.
13. The onus lies with the appellant to provide the relevant information to demonstrate compliance with the limitation set out in Paragraph O.1(b). In my opinion, the burden of proof has not been adequately discharged. Based on the evidence presented, I do not have the necessary confidence that the primary use of the building on 29<sup>th</sup> May 2013 was for B1(a)(offices).

14. Accordingly, I must conclude that the proposal does not constitute permitted development under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Thus it is not necessary for me to consider the matters set out in Paragraph O.2.

**Conclusion**

15. For the reasons given above I conclude that the appeal should fail.

*Robert Parker*

INSPECTOR