
Appeal Decision

Site visit made on 17 July 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 21 July 2017

Appeal Ref: APP/P1560/W/17/3168700

Springfields, Golden Lane, Thorpe Le Soken, Essex CO16 0LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class O of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Harrison Waterproofing Ltd against the decision of Tendring District Council.
 - The application Ref 16/00994/COUNOT¹ is dated 24 June 2016.
 - The development proposed is described as 'application for prior approval for the conversion of an office building to a residential dwelling'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether sufficient information has been provided to establish whether the appeal site benefits from permitted development rights under the provisions of Schedule 2, Part 3, Class O of the GPDO².

Reasons

3. The appeal building is detached and located towards the south-western boundary of the garden of Springfield. The building is single storey and discreetly located behind an extensive belt of landscaping that marks the boundary of the garden. The building is currently surrounded by garden ornaments stored on racks which the appellant is in the process of selling. A large marque is located towards the northern end of the formally landscaped garden and I understand that this is used as a wedding venue for hire.
4. The appeal building is currently in use as an office and is occupied by Harrison Water Proofing Ltd, the appellant's business. Six members of staff (including the appellant) were present at work stations/desks when I visited. The building contained office paraphernalia, desks, computers, a filing room and welfare facilities in the form of a kitchenette and water closet. From what I observed, and on the balance of probabilities, it is likely the building is currently in use as a distinct and separate office falling within use Class B1(a).

¹ I have taken this reference number from the Council's letter of the 26 May 2017 in respect of the appeal

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

5. The appellant suggests the building was in a B1(a) office use on the 29 May 2013 and that the permitted development rights conferred by Class O of Part 3 of the GPDO can be applied. I have seen nothing to suggest the building was not an office on the 29 May 2013.
6. Nevertheless, in 2003 the appeal building was the subject of a planning application³ described as 'retention of office'. The application was approved but it is unclear from the information before me whether the application included operational development such as the construction or major remodelling of the appeal building. The 2003 planning permission was subject to a condition that *the building hereby permitted shall be used incidentally and ancillary to the enjoyment of the dwelling house Springfield and may only be used for office purposes by the applicant whilst permanently resident of the dwelling house Springfields, Golden Lane, Thorpe Le Soken.*
7. The use of the term 'the building hereby permitted', would suggest the building was newly constructed or significantly remodelled as an outbuilding within the residential curtilage of Springfield and that its use as an office was intended as an ancillary home office. Condition 2 appears to have been imposed to ensure this status endured into the future. Whilst I cannot be certain this was the case, it seems this is the most likely eventually based on what is before me.
8. The appellant suggests the development granted in 2003 was the use of the outbuilding as an office but substantive evidence has not been provided to support this proposition. If the application was a change of use then it is unclear what the previous use was and therefore whether the 2003 application included a material change of use. Put another way, there is nothing to suggest the development approved in 2003 took the use of the building beyond being subsidiary to the residential use of Springfields or that the appeal building was already a separate planning unit. Moreover, the permission for the 'office' was only for the benefit of the applicant whilst resident at Springfields⁴. This may prevent staff from using the building, enforces a functional link with the host dwelling and would suggest the use envisaged at the time was to be low key and ancillary in nature.
9. Condition 2 prevents the building's use as a separate and distinct planning unit. This is because any use of the building as an office would have to be incidental and ancillary to the residential use of Springfield, such as an ancillary home office. The consequence being that the condition renders the appeal building as an adjunct of Springfield and thus places it within the residential (C3) use class.
10. This is significant because the use of the building as a separate office, which is not incidental and ancillary to the occupation of Springfield, would be contrary to the requirements of Condition 2 of planning permission 03/01173/FUL and thus unlawful. Substantive evidence has not been provided to suggest the current use of the building as a B1(a) office is lawful in spite of the imposition of Condition 2. Article 3 (5b) of the GPDO states that the permission granted by Schedule 2 of the GPDO does not apply to an existing unlawful use.
11. In this respect, the appellant has failed to provide sufficient evidence to enable me to conclude with confidence that the existing B1(a) use is lawful. Thus, the

³ Council reference 03/01173/FUL

⁴ Secured through Condition 2 of planning permission 03/01173/FUL

appellant has provided insufficient information to enable me to establish whether the proposed development complies with any conditions, limitations or restrictions specified in the applicable part of the GPDO, namely, that the building was in a lawful B1(a) use on the 29 May 2013. Consequently, a refusal under Paragraph W3(b) of the GPDO would be justified.

12. Notwithstanding Paragraph W(3) of Part 3 of the GPDO, the Council did not issue a formal decision notice refusing the prior approval application as it is of the view the proposed development cannot constitute permitted development under Class O of Part 3 of the GPDO. Instead, the Council turned the application away.
13. By turning the application away the Council did not determine the prior approval application and therefore the 56 day determination period following the date the application was made has expired. Consequently, if I were to find that the proposal constituted permitted development then prior approval would have been deemed to have been granted and the development could have commenced in accordance with Class W⁵. However, given my findings that there is insufficient evidence before me to suggest the appeal building is currently in a lawful B1(a) use, Paragraph W11(c) is not engaged.
14. Condition 2 of the 2003 permission does not remove permitted development rights by setting out specific exclusions preventing the application of the GPDO. Therefore, and in accordance with the relevant High Court ruling⁶, the condition could not prevent the exercise of the rights conveyed by Part 3, Class O of the GPDO if the building is lawfully in a use falling within Class B1(a). However, I cannot be satisfied this is the case. Instead, the apparently lawful use of the building is as an ancillary and incidental outbuilding to Springfield – a residential use – and therefore the rights under Class O cannot be conferred upon it.
15. In summary, in order to benefit from the provision of Schedule 2, Part 3, Class O of the GPDO the appeal building must have been in a lawful B1(a) use as of the 29 May 2013. In this case insufficient information has been submitted to establish whether the building was lawfully in such a use on the required date and, therefore, I find that the proposal before me is not permitted development. Consequently, I conclude the appeal scheme is development for which planning permission is required. An application for planning permission would be a matter for the Local Planning Authority to consider in the first instance.
16. Given my findings above it is not necessary for me to consider the merits of the prior approval application against those matters set out in Paragraph O.2 of Class O of the GPDO. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

⁵ Part 3, Class W, Paragraph 11(c) of the GPDO

⁶ Dunnett Investments Ltd v Secretary of State for communities and Local Government 2016