The Planning Inspectorate

Appeal Decision

Site visit made on 8 August 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 16 August 2017

Appeal Ref: APP/X2220/W/17/3174640
1 & 2 Cold Storage Units, East Street CT3 2DA

- 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 & Mrs Vines against the decision of Dover District Council.
- The application Ref DOV/16/01490, dated 21 December 2016, was refused by notice dated 28 February 2017.
- The development proposed is change of use from storage (Use Class B8) to residential dwelling (Use Class C3).

Decision

1. I allow the appeal and grant approval under the provisions of Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the change of use from Class B8 (storage or distribution centre) to Class C3 (dwellinghouses) of units 1 & 2, Cold Storage Units, East Street CT3 2DA in accordance with the details submitted, and subject to the following conditions;

    1) No development shall take place until a detailed scheme for the disposal of foul water and sewage, together with a programme for implementation and long-term maintenance, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and operational before any of the dwellings are first occupied and shall be maintained in accordance with the approved scheme thereafter.

    2) No construction work shall take place outside the hours of 0800 and 1800 Mondays to Fridays and 0800 and 1300 on Saturdays, and no work shall be carried out on Sundays, Public and Bank Holidays.

Application for Costs

2. An application for costs was made by Mr & Mrs Vine against Dover District Council. This application is the subject of a separate Decision.

Main Issue

3. This is whether the proposal satisfies the requirements of the Town & Country (General Permitted Development) (England) Order 2015 with regard to being permitted development under paragraphs P.1.(a) and (b).

Reasons

4. Class P. of Schedule 2 of the Order permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule. Paragraph P.1 states that development is not permitted by Class P if (a) the building was not used solely for a storage or distribution centre use on 19th March 2014 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; and (b) the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.

5. Paragraph W. on procedure sets out the information to be provided and states at W.(3) that the local planning authority may refuse an application where, in the opinion of the authority (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

6. The Council's 2 reasons for refusal allege that neither of the requirements in P.1.(a) or (b) have been shown to have been met. It can be inferred that the remaining requirements in paragraph P.1. (c) to (j) inclusive are agreed to have been met. Paragraph P.2. sets out various other matters for which prior approval may be required, such as the impact on air quality, transport and highways, and contamination, and the Officer's Report confirmed compliance. Local residents have objected on the basis of the narrow lane and the site sharing a postcode with a nearby caravan site, allegedly resulting in caravans using the lane in error. There has been no objection from the highway authority and whatever the findings with regard to paragraph P.1, it appears likely that the established use could generate a greater quantity of traffic and heavier vehicles. It is concluded now that highway and the other matters in P.2 do not count against the proposal.

7. Similarly, and unlike Class Q which may include building operations, there is no requirement with regard to the type or amount of work needed to carry out the change of use. The Council state that Class P deals with the principle of the change and any alterations to the building, how the dwelling would be converted and therefore the appearance is not to be determined as part of this application and rather an applicant would have to submit a separate application. In that way the concerns of a local resident over the control of alleged asbestos lagging or the fire retardant properties of insulation would be addressed.

8. There are three sources of information in this appeal, that put forward by the appellant, that of the Council, and the findings of an Inspector considering an appeal in February 2015 (Ref; APP/X2220/W/15/3135538) on the Council's refusal to grant prior approval for change of use under Class Q, which is agricultural to dwellinghouse. Those findings were that *'the change of use sought would not be permitted by Class Q under Schedule 2, Part 3: Changes of Use, Class Q – Agricultural buildings to dwellinghouses, Part Q.1. (a), of the 2015 Order, as the three buildings in question were not used for agricultural*

uses on or before the critical date of 20 March 2013, and are not therefore 'agricultural buildings' for the purposes of the Order'.

9. The Council's case is based partly on those findings and concludes that there are a number of ambiguities that led the Officer to consider that it was inconclusive as to whether the buildings in question were solely being used for a storage or distribution centre use on 19th March 2014, or that if the buildings were not in use on that date, that they were in use for storage or distribution when last in use. The Council continue their analysis with the view that *'it can be concluded likely that there was a period from October 2008 until February 2010 when Units 1 and 2 were being used for a fencing/landscaping business and wedding car business/storage'* and that since 2010 unit 1 was used for the storage of wedding cars and unit 2 for various storage uses.

10. The Officer found that on the balance of probability it could not be definitively concluded that the building meets the criteria to benefit from Class P permitted development rights and that it was used for Class B8 purposes on the required date. This appears to be a finding under paragraph W.(3)(b) rather than a definitive statement of non-compliance under W.(3)(a).

11. The appellant has supplied information and statements detailing the historic use of the 3 units, although only units 1 and 2 are the subject of this appeal. This statement also provides a commentary on where the appellant considers the Council to have misunderstood the evidence. Certainly the period when the door to unit 1 was damaged is of no relevance to the use, even though indicating a temporary period when storage items could not be accessed or added to. That temporary period appears to have coincided with the previous Inspector's visit.

12. There may appear to be conflicting information in that the evidence presented to the Inspector in 2015 is stated by the Council to be that an uninterrupted agricultural use had been carried on. It is noted however that the Inspector did not find that to be the case, and the present application is backed by sworn statements that would be subject to the force of law if found to be untrue.

13. On the evidence, there is no indication that any of the commercial uses, such as business to do with motorcycles, fencing or classic cars, involved other than storage. The appellant's conclusion is that the submitted evidence clearly demonstrates a continuous use of Units 1 and 2, from 2003 to the present day, for purposes in connection with a commercial storage uses; albeit by different companies. It is further asserted that the use was taking place in both units on the required date of 19th March 2014.

14. To conclude, the proposal would benefit from permitted development under Class P, as on the balance of the evidence paragraph P.1.(a) has been shown to be complied with and paragraph P.1.(b) is therefore capable of being complied with within the remaining time permitted under the Order.

15. The Council suggested a condition requiring the development to be complete and in use by 15 April 2018, but that is not necessary as after that time the provisions of Class P would not apply, as currently enacted by the Order at Class P.1.(c), although that may change. Paragraph W.(13) does however allow the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. Paragraph P.2.(iii) and (iv) concern contamination and flooding and it is reasonable to

attach the suggested drainage condition. Similarly paragraph (v) concerns noise impacts and it is reasonable to attach a condition restricting the hours of construction as suggested by the appellant and referred to in the Officer's Report. Landscaping or visual impact is not a matter listed in the Order at Class P and so the suggested condition on landscaping is not appropriate.

16. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR