



Appeal Decision

Site visits made on 16 July 2018 & 17 July 2018

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st August 2018

Appeal Ref: APP/N5090/W/18/3197410

Supported Fostering Services, 115C Brunswick Park Road, New Southgate, Barnet, London N11 1EA

- 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 Barry Glass of Investigate Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 17/7842/PNO, dated 11 December 2017, was refused by notice dated 18 January 2018.
 - The development proposed is change of use from Use Class B1 (office) to Use Class C3 (residential) to provide 8 units.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use from Use Class B1 (office) to Use Class C3 (residential) to provide 8 units at land at Supported Fostering Services, 115C Brunswick Park Road, New Southgate, Barnet, London N11 1EA in accordance with the terms of the application Ref 17/7842/PNO, dated 18 January 2018, and the plans submitted with it.

Application for costs

2. An application for costs was made by Mr Barry Glass of Investigate Ltd against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Procedural Matter

3. During the determination of the appeal, the revised National Planning Policy Framework (the Framework) was published. I gave the parties the opportunity to comment on this and have had regard to the comments received in my decision.

Main Issues

4. The main issues in this case are:
 - Whether there is a condition in place which prevents reliance on Class O of the GPDO; and

- If not, the effects of the development on transport and highways, with particular regard to parking provision.

Reasons

5. Class O of Part 3, Schedule 2 of the GPDO allows for the change of use from offices to residential subject to a number of limitations. However, the Council is of the view that a condition attached to the permission granting change of use from driving standards agency test centre to administrative offices (Class B1) in 2000 removes any rights provided by the GPDO.
6. The condition states that the "*premises shall be used for office use and for no other purpose (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class or any statutory instrument revoking and re-enacting that order with or without modification)*". The reason given for the condition is to "*enable the local authority to exercise control of the type of use within this category in order to safeguard the amenities of the area*".
7. The main parties have usefully referred to two ways in which the purpose and meaning of this condition could be interpreted. The legal opinions from both parties accept that both interpretations are arguable to a certain extent. The 'expansive' interpretation, favoured by the Council, posits that the condition should be read as removing permitted development rights endowed by the GPDO as well as any changes of use under the Use Classes Order (UCO). The 'narrow' interpretation favoured by the appellant suggests that the condition only removes rights within the UCO. For ease and consistency I have adopted these descriptions in my analysis.
8. The parties have drawn my attention to various relevant judgements, including *Trump*¹, *Dunoon Developments*² and *Dunnett*³. Taken together, along with others referred to within these judgements, they identify a number of important guidelines for considering this issue. Most importantly, the courts have determined that exclusion of the application of the GPDO can be implied and thus it does not have to be explicitly referred to. Rather, as stated in *Dunnett*, the permission and its conditions must be interpreted objectively as a whole and in doing so, the question is what a reasonable reader would understand the words to mean, reading the condition in the context of the other conditions and of the consent as a whole. The judgement goes on to state that to exclude the application of the GPDO, the words used in the relevant condition "*must clearly evince an intention on the part of the local planning authority to make such an exclusion*".
9. The condition clearly states that the development shall be used for office and no other use. This has an obvious similarity to the condition in the *Dunnett* case, where the Courts have held that as the condition allowed for B1 use "*and for no other purpose whatsoever*", this was sufficient to 'clearly evince' an intent to restrict the GPDO. The condition here does not allow for any other use other than office. Moreover, it only 'includes' the UCO as a specific restriction. This implies that the condition is not exhaustive and the UCO is

¹ *Trump v The Scottish Ministers* [2016] 1 WLR 85

² *Dunoon Developments v SSE & Poole Borough Council* [1993] P&CR 101

³ *Dunnett Investments v SSCLG* [2017] EWCA Civ 192

- merely given as an example. This does not therefore necessarily rule out the possibility that the GPDO is also restricted. I shall return to this matter below.
10. Both parties recognise that the condition must be read in its full context, and that the reason for the condition is an important factor in determining whether the Council has met the burden suggested by the Courts. The reason given has two distinct limbs. The second of these is to "*safeguard the amenities of the area*". This is wide in scope and could be seen as indicative of a more general concern over the impact of non-office development and the need to restrict any other use. However, this does not provide the full picture. The first limb clearly states that the purpose of the condition is to give the local authority control over the "*type of development within this category*" [my emphasis]. To focus only on the second limb would therefore be both inappropriate and potentially misleading. The narrow interpretation would have it that this wording reduces the scope of the condition to the B1 Use Class only. Clearly, if the reason for the condition is to only control uses *within* the B1 Use Class in order to protect amenity, then it would be difficult to conclude that it should be seen as also removing all forms of permitted development.
 11. The Council accepts that use of the word 'category' is 'problematic', but has suggested a number of reasons why it should not be seen as supporting the narrow interpretation. Firstly, they argue that as the UCO does not relate to 'categories' then the condition cannot realistically be seen as referring to such. I am not persuaded by this argument. To put this word aside on this basis would be to deprive it of any meaning whatsoever and conclude that it has no purpose. This is neither necessary nor appropriate.
 12. The *Trump* judgment states that "*incompetent drafting should not prevent the court from giving a condition a sensible meaning if at all possible*". It also states that a condition should be interpreted benevolently and not narrowly or strictly. Any error in drafting here does not mean that a common sense view cannot be taken of what the reasoning means and is seeking to achieve. Use of the word 'category' may be somewhat clumsy, but in a context where the condition is certainly seeking to restrict uses within the B1 Use Class (through a restriction to offices only), it is reasonable to conclude that 'category' is being used here as a synonym for 'class'. This affords the reason and condition what I consider to be a common sense meaning of seeking to control uses within the B1 Use Class (category) in order to protect amenity.
 13. The Council also suggests that as B1 uses are those which are normally acceptable within residential areas, that to limit the meaning of the condition to be restrictive of B1b and B1c uses only would mean that it would be seeking to address problems which would rarely ever take place. However, it is not my role here to consider whether the condition meets the tests set out in the Planning Practice Guidance or the Framework, particularly that of necessity, but rather whether it 'clearly evinces' an intention to remove all permitted development rights.
 14. The fact the Council saw fit to restrict development to office only implies that they had concerns over the other uses within B1. Neither party has given any indication that this was made explicit in the original permission, but if the Council had had no concerns over the other uses then there would have been no reason to restrict the development to offices only. This lends weight to the view that the intent of the condition, through specific reference to the UCO,

was to specify and highlight the restriction within the B1 Use Class or, in the parlance of the reason given, the 'category' of development taking place. In my view, the narrow interpretation is the more persuasive in this context.

15. The permission was granted prior to the amendments to the GPDO which allowed the change of use from office to residential. Thus it would be unreasonable to have expected the Council to anticipate this and make specific reference to such a change in the condition. Nonetheless, I am unconvinced that in drafting the condition the Council were seeking to anticipate potential changes to the GPDO. In any event, such an interpretation would still not explain the reference to the "*type of development within this category*", which in my view seeks to qualify the scope of control.
16. As referred above, the use of 'including' in the condition casts some doubt on the narrow interpretation. There are acknowledged similarities here to the condition considered in *Dunnett*. However, to look only at the condition itself and ignore the reason for it would go against the principles established by the Courts. In particular, that a condition should be considered objectively and as a whole. When read in this way, the reference to the UCO part of the condition is most likely intended to explicitly refer to the restriction within the B1 Use Class that is being imposed. As it is not normal to remove rights within a use class, it is likely that this wording was used to convey the distinction between office development and those other uses within B1. This interpretation also provides a reasonable and logical link between the condition and the reason. Again, this adds weight to the narrow interpretation of the condition.
17. The Council has drawn my attention to a recent appeal decision⁴ which considered a similar issue. The condition in that case was similar to that before me, though it clearly restricted uses within the B1 Use Class, rather than offices only and the reference to the UCO limited anything within the 'B' Use Classes, rather than just B1. The Inspector in that case concluded that the condition in question removed rights under both the UCO and GPDO.
18. However, the reason given for that condition did not qualify the purpose of the restriction in the same way. In that case, the reason was simply to safeguard the amenity of adjoining residents and to enable the local planning authority to exercise control of the type of use. There is no suggestion in this condition or reason that the main purpose was to control the type of development *within* a particular class or category. This appears to be a far clearer, unequivocal and broader statement of the Council's intent which is materially different to that before me.
19. While there is an obvious lack of clarity relating to the condition, I am not persuaded that the 'expansive' interpretation is correct when considering the condition itself, the reason given and any extrinsic material provided by the main parties. In my view, these do not clearly evince intent to remove all permitted development rights. As such, the 'narrow' interpretation is the most persuasive in this case. While I recognise that my interpretation differs to that considered in *Dunnett* and other examples, there are sufficient material differences to those cases which justify an alternative interpretation of the condition's intent. Moreover, in coming to this conclusion I am satisfied that I have followed the principles established by the relevant judgements.

⁴ APP/N5090/W/18/3198064

20. In conclusion, I do not therefore consider the condition removes all permitted development rights and thus the Council were able to consider the application under Class O of Part 3, Schedule 2 of the GPDO.

Highway Safety

21. Class O requires consideration of whether prior approval will be required in relation to the transport and highways impacts of the development, contamination and flood risk. The Council is satisfied that there would be no contamination or flooding issues, but has concluded that owing to a lack of off-street parking, the development would result in unacceptable transport and highways impacts.
22. The appellant's assertion that the development would generate demand for around 8 parking spaces is a reasonable one. The existing use has the scope to generate a higher demand for parking than the development. However, while I have given moderate weight to this factor, it is legitimate to consider the difference in potential impacts from daytime parking demand from the offices and overnight parking from the residential use.
23. The site is not within a Controlled Parking Zone (CPZ). Policy DM17 of the Barnet Development Management Development Plan Document (DMDPD) allows for limited or no parking outside CPZs where it can be demonstrated there is sufficient on-street parking. This is not an application to which Section 38(6) of the Planning and Compulsory Purchase Act 2004 applies. Consequently, although it is material that the Council wishes to control parking in the interests of highway safety, prior approval is only required for the specific grounds set out in paragraph O.2(a). As such, while useful in assessing likely impacts, the policy is not decisive.
24. Nonetheless, the appellant has carried out an assessment which purports to demonstrate that there is sufficient parking in the vicinity of the site. This shows some significant differences in the capacity of different streets, with some being well over 90% full and others exhibiting much higher levels of spare capacity. The overall figures provided are skewed to an extent by the inclusion of streets where parking was not taking place. However, the analysis still suggests there would be sufficient overall capacity in the vicinity of the site to accommodate the relatively small increase in likely demand for overnight parking. I have nothing which would contradict this data. The reduction in potential demand from the lawful office use should also help mitigate any effect of the development, particularly during the day.
25. I visited the site on two different days at different times; once around midday and once between 1600 and 1700. While my observations can only be a snap shot of normal conditions, I saw there were some signs of parking pressure, particularly at midday, though spaces in the vicinity of the site were still available on both occasions. There appeared to be more capacity later in the afternoon. I saw no evidence of obstructive or inconsiderate parking on Brunswick Avenue, Brunswick Grove or Brunswick Crescent.
26. No cars were parked directly outside the site on Brunswick Park Road on either occasion. Although there are no restrictions, the road is relatively narrow and on a bend. Parking here would be likely to cause some degree of obstruction. Nevertheless, as the parking survey suggests there is likely to be space in the residential streets nearby, then parking on this street is not an inevitable

consequence of the development. Should there be overspill from those streets where pressure appears at its highest, it seems more likely that it would be displaced to those areas where greater capacity exists within the residential streets than to this location.

27. A small number of cars were parked on Brunswick Park Road nearer to the junction with the cemetery and crematorium entrance. These cars were causing something of an obstruction to two-way traffic which required cars and buses to wait short periods for vehicles to pass by. While not necessarily an unusual or inherently dangerous practice, on a number of occasions I saw cars mounting the pavement to avoid waiting. The road here is long and straight and has good visibility in both directions, but clearly this kind of behaviour is unsafe. Nevertheless, this would be occurring with or without the development in place and it is unlikely that any additional parking demand would be such that it would unacceptably exacerbate the existing situation or cause similar problems elsewhere in the area.
28. The Council has indicated that Barnet is the highest ranked London Borough for incidents involving parked vehicles. While this may be the case, there is nothing before me which suggests on-street parking in this area has been a particular cause of recorded accidents, or that parking derived from the development would alter the existing situation to any material degree. Notwithstanding the localised issues I saw on Brunswick Park Road, the appellant has also provided accident data which does not suggest on-street parking has been the cause of a significant number of accidents in the immediate area. There is nothing before me to suggest I should conclude otherwise.
29. I have had regard to the comments of local residents and that the Council has indicated that they are considering imposing restrictions in this area. Nevertheless, this does not mean that the relatively limited demand for parking created by the development would lead to unacceptable risks. Neither would such controls create a moratorium on development. The offices already generates potential demand for parking. Although there would be a clear difference between the timing of demand from office and residential uses, I am not convinced that the increase in overnight parking potential would be such that it would cause or exacerbate highway safety problems. Moreover, allowing this appeal would not prevent the Council from continuing to consider such measures in the future nor prejudice their effectiveness should they be put in place.
30. In conclusion, I have seen nothing that would lead me to conclude the development would result in any unacceptable risk to highway safety or severe cumulative effects on the efficient operation of the transport network. Notwithstanding my earlier comments on the status of the development plan in this case, I also conclude there would be no conflict with DMDPD Policy DM17, Barnet Core Strategy Policy (CS)(2012) CS9 or London Plan Policy 6.13 which seek, amongst other things, to ensure development does not have an unacceptable impact on highway safety. There would also be no conflict with paragraph 109 of the Framework which states that development should only be refused where there would be an unacceptable impact on highway safety.
31. The Council referred to CS Policy CS15 in its decision notice, but this is not relevant to highway and transport impacts.

Conditions

32. The GPDO attaches standard conditions to this type of development, including that development must be completed within a period of 3 years, starting from the prior approval date. The GPDO also requires that the development must be carried out in accordance with the details provided in the application. There is no reason therefore for specific conditions on timescales or plans. The Council suggested no other conditions and I am satisfied none are necessary.

Conclusion

33. For the reasons given above I conclude that the appeal should be allowed.

S J Lee

INSPECTOR