
Appeal Decision

Site visit made on 28 January 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2019

Appeal Ref: APP/L3625/W/18/3204097

Littleton Manor Farm, Littleton Lane, Reigate, Surrey RH2 8LB

- 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 Matt Tarrant against the decision of Reigate & Banstead Borough Council.
 - The application Ref 18/00024/PAP3P, dated 3 January 2018, was refused by notice dated 21 February 2018.
 - The development proposed is described as 'change of use from B8 storage/warehouse use to residential dwelling(s)'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. Applications for costs have been made by Mr Matt Tarrant against Reigate & Banstead Borough Council and by Reigate & Banstead Borough Council against Mr Matt Tarrant. These applications will be the subject of separate Decisions.

Reasons

3. The main issue in this appeal is whether the proposal would be permitted development under Schedule 2, Part 3, Class P of the GPDO¹.
4. Class P of the GPDO grants planning permission for the change of use of a building and land within its curtilage from a use falling within Class B8 (storage and distribution) to a use falling within Class C3 (dwelling house). Paragraphs P.1(a) and (b) of Class P state that development is not permitted by Class P if the building was not used solely for a storage and distribution centre use on the 19 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.
5. There is no record of planning permission having been granted for the use of the appeal building as an independent storage facility falling within use class B8. Therefore, the appellant has sought to demonstrate that the appeal building has been used as a commercial store unconnected with the other business activities at Littleton Manor Farm, in accordance with Paragraphs P.1 (a) and (b), through the submission of evidence.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

6. The evidence is focused on the sworn statement of Mr Peter Lukas, which states that the building was solely in use for commercial storage on the 19 March 2014 and for the four year period before the date development under Class P was proposed. The evidence in the sworn statement is as follows:
- Photographic evidence of a catering van, which I observed during my site visit, with confirmation that it has been stored in the appeal building since 2012. The vehicle belongs to a Mr Max Lightfoot Brown and has been stored since he went overseas in December 2012.
 - Photographic evidence of Heras fencing and picnic tables, which are stored in connection with the Patrick Evans Foundation annual music festival. It is suggested that the charity are charged a peppercorn rent. A letter from the charity confirms that it has been operating the festival since 2011 and stores the items described by Mr Lukas in the appeal building.
 - Photographic evidence showing that a vehicle belonging to Sebastian Madden is stored within the building with confirmation that it has been parked there for the last five years. A picture of a receipt has been supplied confirming that a fee has been paid to the appellant by Mr Madden.
 - A number of Voltaire Design trailers are kept in the barn and have been for the last six years by Matt Tarrant, the appellant.
7. In establishing whether or not a particular use is lawful the appellant does not need to prove matters 'beyond reasonable doubt' and the appellant's own evidence does not need to be corroborated by 'independent' evidence to be accepted. Thus, if the Council has no evidence of their own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to accept it. This should not however be interpreted as an unqualified requirement to accept the evidence presented. Instead, the evidence still has to be sufficiently precise and unambiguous and should therefore be scrutinised accordingly.
8. The sworn statement was made on oath and should not be dismissed lightly but it is unclear whether the catering van is, or has ever been, stored as part of a commercial arrangement. Documentation has not been provided to confirm a peppercorn rent has been paid by the Patrick Evans Foundation to store fencing and picnic tables or that this equipment is not used for other events at the equestrian centre. Furthermore, it is not entirely clear what the fee paid by Mr Madden relates to. Even if I were to assume it was a fee for the long term storage of the vehicle, this one off payment does not demonstrate an ongoing commercial arrangement. Moreover, the receipt is dated 2015 and therefore postdates the 19 March 2014.
9. In respect of the appellant's trailers, it is unclear whether these are stored as part of a commercial arrangement or simply kept in the barn as a function ancillary to the wider equestrian centre. Moreover, the trailers have been used to store marquees and the Council's records list an enforcement investigation into the erection of marquees at Littleton Manor Farm. This suggests some cross over between the trailers and the equestrian centre. Moreover, it is a point of note that the only record of a commercial rating at Littleton Manor is the equestrian centre and the Council's Case Officer observed an equestrian trailer being stored in the building, which suggests the building is used to some

extent as ancillary storage by the equestrian centre. This would suggest that the building was in a mixed use.

10. For the foregoing reasons the evidence submitted by the appellant lacks precision and therefore I share the Council's scepticism as to whether an independent commercial storage use, falling within use class B8, has been established as opposed to ancillary storage or a mixed use. Notwithstanding this, even if I took an alternative view and accepted the appellant's submissions as demonstrating a B8 use of the appeal building, the evidence is problematic. Article 3(5)(b) of the GPDO states that Schedule 2 (and thus Class P) does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful.
11. As the alleged B8 use of the appeal building is unauthorised it is necessary for the appellant to demonstrate the use has endured for a continuous period of ten years from the date of the breach in order for it to be immune from enforcement action and thus lawful². It is unclear whether a B8 use has to be lawful on the 19 March 2014 to benefit from Class P rights or lawful on the date the application for prior approval is submitted. If it is the first scenario then the 10 year immunity period would be 18 March 2004 to 19 March 2014. If the second scenario is more appropriate the ten year period would be 2 January 2008 to 3 January 2018. The appellant has submitted an appeal decision³ where the Inspector favoured the latter approach and I am content to follow this for the purposes of the appeal before me.
12. The appellant has also referred to an appeal decision⁴ where a point in dispute was whether or not the building the subject of that appeal was in a B8 use on the necessary date. However, the requirements of Article 3(5) do not appear to have been a substantive matter in that appeal and therefore the decision is of limited weight to my deliberations.
13. The evidence submitted by the appellant goes as far back as 2011. As such, a ten year period has not been established. Accordingly, even if I was satisfied the submitted evidence demonstrated that the building was in a B8 use on the required date and for the necessary period, under Paragraphs P.1 (a) and (b), that use would be unlawful and therefore, in accordance with Article 3(5) of the GPDO, Class P does not apply in this instance.

Conclusion

14. In conclusion, regardless of the planning merits of the proposal⁵ or the precision of the evidence submitted, the rights conferred by Class P of the GPDO do not apply in this instance by virtue of Article 3(5). I therefore conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class P of the GPDO and therefore the appeal should fail.

Graham Chamberlain
INSPECTOR

² See s191(2) and s171B(3) of The Town and Country Planning Act 1990

³ APP/Y3940/W/15/3139579

⁴ APP/C3620/W/18/3192716

⁵ The appellant has referred to a number of possible benefits of the proposal including a boost in housing supply to meet local needs. However, such matters cannot justify an application for prior approval under Class P of the GPDO when Class P does not apply.