



Appeal Decision

Site visit made on 13 May 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2019

Appeal Ref: APP/J1860/W/19/3223284

Barn at The Sett, Dingle Road, Leigh, Worcester, Worcestershire WR6 5JX

- 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 Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr and Mrs P Timmins against the decision of Malvern Hills District Council.
 - The application Ref 18/00973/GPDQ, dated 29 June 2018, was refused by notice dated 21 August 2018.
 - The development proposed is the proposed conversion of barn to a single dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, I have adjusted the description of development to align with the Council's decision notice and appeal form: 'Prior Notification for the proposed change of use of agricultural building to a dwellinghouse (C3) and associated operational development'.
3. This appeal relates to Schedule 2, Part 3, Class Q of the GPDO¹. Class Q (a) permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a Class C3 use (dwellinghouses).

Main Issues

4. The Main Issues are:
 - 1) whether any approval, which may be granted by paragraph Q (a) of the GPDO, is prevented by condition 3 of planning approval 04/01275/FUL and if not;
 - 2) whether any conditions or limitations of Class Q prevent prior approval being given.

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

Reasons

The effect of condition 3

5. Condition 3 attached to the original planning approval² states 'the building hereby approved shall not be used for any other purpose than the storage of animal feedstuffs and equipment, and agricultural maintenance machinery, which are required on the associated land holding'. The reason for the condition was 'in the interests of the visual and land use amenities of the area and Landscape Policy 1 of the Malvern Hills District Local Plan, since the building is only permitted in the interests of the use of the associated land for keeping livestock'.
6. Permitted Development (PD) rights are limited by Article 3(4) of the GPDO, which states that nothing in the Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act or otherwise than by the order. The effect of this national restriction is that it does not therefore require an explicit reference in the decision notice itself.
7. The appellant has referred to a number of rulings, I consider that the *Carpet Decor*³ and *Dunoon*⁴ rulings are of particular relevance. In *Carpet Decor* the court concluded that if the local planning authority intends to exclude the operation of the UCO 1987⁵ or the GPDO it should say so in unequivocal terms. In *Dunoon*, the condition under discussion used the phrase 'the use shall be limited to', and the courts concluded that 'limited to' did not remove the GPDO rights. It commented that a condition must exclude the operation of the GPDO expressly and not just by implication. The ruling also concluded that conditions must be clear and unambiguous and that the condition was not sufficiently clear or unequivocal to preclude rights conveyed by the GPDO. The *Dunoon* ruling also identified where a condition could reasonably require the LPA's express consent due to sensitivities of the site, excluding the rights of the GPDO.
8. The appellant has also referred to two appeal decisions. The appeal decision in *Great Missenden*⁶ concerned a condition which required that the development to only be used for purposes within the Use Class B1 as defined in the UCO 1987. The Inspector considered a number of rulings and concluded that as the condition made no reference to the GPDO, it did not unequivocally prevent the operation of it and only defined the range of the planning permission. Another appeal decision in *Chiselhampton*⁷, concerned a condition stating that the use of the building shall be limited to the uses defined in Classes B8, B1 (b) and B1(c) of the UCO 1987. The Inspector determined that the effect of the condition was to simply define the ambit of the planning permission and had no influence on the GPDO.
9. Whereas, the Council has referred to the *Dunnett Investments* case⁸. Here a condition was imposed that limited the use to purposes within Class B1 and 'for no other purpose whatsoever, without the express planning consent from the

² Planning approval reference: 04/01275/FUL

³ *Carpet Décor* (Guildford Limited v Secretary of State for the Environment [1981])

⁴ *Dunoon Development v Secretary of State for the Environment and Poole Borough Council* [1993]

⁵ Town and Country Planning (Use Classes) Order 1987

⁶ Planning Appeal Reference: APP/X0415/A/14/2228438

⁷ Planning Appeal Reference: APP/Q3115/W/18/3204899

⁸ *Dunnett Investments Ltd. v. SSSLG & East Dorset DC* [2016] EWHC 534 (admin) and [2017] EWCA Civ 192

Local Planning Authority first being obtained'. This was ruled to be clear and emphatic and excluded the grant of Permission by the GPDO. An 'express planning consent from the LPA' meant the need to grant permission on application. The *Dunnett* case also found that the second part of the condition (for no other purpose) on its own prevented the operation of the order and if that was not its meaning it would have served no other purpose. I therefore concur with the Council that the second part alone is adequate to prevent the benefit of GPDO rights.

10. Furthermore, condition 3 clearly defines the full extent of the approved use. As such, the condition as presented is both straightforward and unequivocal. It includes the phrase 'not used for any other purpose' and is therefore unambiguous and explicit. It justifies itself and its purpose with a reason that explains wider environmental impacts than the functionality of the GPDO, which is a clear signpost of its intent. It therefore does not require the final tailpiece (express written consent) as this would inevitably follow as no other purpose was permitted. The condition here goes beyond just defining the scope of the approved use and limits the purpose of it, thus excluding PD rights.
11. I am therefore satisfied from the evidence before me that the condition attached to the planning permission is sound. Furthermore, for the reasons indicated above, it has the effect of disapplying any approval which might otherwise have been available in other circumstances under Class Q.
12. In order to benefit from any planning permission granted by Article 3 of the GPDO 2015, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, condition 3 attached to planning permission 04/1275/FUL restricts such development by only allowing the use of the barn for the storage of animal feedstuff and equipment, and agricultural machinery. Having considered the case law and appeal decisions the proposed dwelling is not permitted by the GPDO 2015. It is therefore development for which express planning permission is required, and that could only be granted on an application made to the local planning authority in the first instance.

The effect of conditions or limitations of Class Q

13. Given my conclusion, that the proposed change of use would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not any conditions or limitations of Class Q prevent prior approval being given as it would not alter the outcome of the appeal.

Conclusion

14. For the above reasons, and having taken all matters submitted into consideration, the appeal is dismissed.

Ben Plenty

INSPECTOR