



Appeal Decision

Site visit made on 15 October 2019

by **S Edwards MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/D1780/W/19/3232407

City West, 67-71 Millbrook Road East, Southampton SO15 1AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ryan English of English Developments Ltd against the decision of Southampton City Council.
 - The application Ref 18/01846/FUL, dated 5 October 2018, was refused by notice dated 3 January 2019.
 - The application sought planning permission for construction of 12 x 2 storey business units with associated parking and highway access to site, without complying with conditions attached to planning permission Ref 01/01622/FUL, which was approved on 31 January 2003.
 - The conditions in dispute are Nos 15 and 16 which states that:
 - (15) *'Units 1-4 inclusive, on the herby approved plan, shall only be used as Offices, Class B1 (a), and for no other purpose whatsoever, including any other purpose in the Schedule of the Town and Country Planning (Use Classes) Order 1987, (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order), Class B1'.*
 - (16) *'Units 5-12 inclusive shall only be used as Business units, Class B1 (b), (c) with ancillary office accommodation, and for no other purpose whatsoever, including any other purpose in the Schedule of the Town and Country Planning (Use Classes) Order 1987, (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order), Class B1'.*
 - The reasons given for the conditions are:
 - (15) *'To enable the Local Planning Authority to retain control over the development in the interests of securing a satisfactory form of development supported by sufficient and adequate measures to provide for the transportation needs associated with the use'.*
 - (16) *'To enable the Local Planning Authority to retain control over the development in the interests of the amenities of the area'.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2003 for the construction of 12 business units with associated parking and vehicular access, subject to a number of conditions. This appeal follows the Council's decision to refuse an application to remove conditions which were attached to the original consent. The removal of the disputed conditions would enable the appellant to seek prior approval for the change of use of the premises to dwellinghouses, in accordance with the rights conferred by Schedule 2, Part 2, Classes O and PA of the Town and Country Planning (England) Order (the GPDO) 2015 (as amended).

3. Therefore, the main issue is whether the conditions in dispute are reasonable and necessary, having particular regard to the effect their removal would have on the amenities of local residents and highway safety.

Reasons

4. Located within an area of mixed character, the appeal site comprises 12 purpose-built business units, with associated car parking spaces, and is bordered either side by commercial uses. Residential properties prevail on the opposite side of the road. A number of conditions were imposed as part of the original consent, in order to restrict the use of the permitted buildings.
5. I have had regard to the extensive case law which has dealt with conditions seeking to restrict the operation of the GPDO. Whilst conditions 15 and 16 do not make explicit reference to the GPDO, the Courts have previously confirmed that a planning condition on a planning consent can exclude the application of the GPDO, which may be implied and thus does not have to be explicitly referred to. When interpreting a condition, it will therefore be a question of fact as to whether it restricts permitted development rights or not. The conditions must be construed objectively and not by what the parties may or may not have intended at the time, in the context of the planning permission as a whole.
6. The wording of the disputed conditions is well-established and widely used, by identifying the use classes within which development is restricted, and by referring to the Town and Country Planning (Use Classes) Order 1987 (the UCO) (as amended), where these particular uses are defined. The intention and effect of the conditions are clear in that the scope of the planning permission was being strictly limited to Classes B1 (a), (b) and (c). As confirmed by the Courts, the words 'for no other purpose' and 'whatsoever' are clear, precise and emphatic¹, and exclude consent being granted by the operation of statutory provision under the GPDO, albeit implicitly.
7. The disputed conditions may currently prevent the appellant from converting the appeal premises to residential accommodation using the prior approval procedure. However, considering the plain and ordinary meaning of the words used, it is clear that conditions 15 and 16 sought, albeit implicitly, to exclude the operation of the GPDO. The effect of such conditions, even if it were unintended at the time they were imposed, is to limit changes of use, including to residential accommodation as notably permitted by Classes O and PA of the GPDO.
8. My attention has been drawn to condition 17, which was also attached to the original permission, and states that *'unless the Local Planning Authority agree otherwise in writing the development hereby permitted and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), or any Order revoking or re-enacting that Order, Schedule 2, part 3, Class B, none of the units shall be used for Storage and Distribution purposes, Class B8 (Town and Country Planning (Use Classes) Order 1987, or any equivalent provision'*.
9. Whilst I note that this particular condition refers explicitly to the GPDO, the wording of the condition indicates that the Council sought to retain control over

¹ Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] EWHC 534 (Admin); [2017] EWCA Civ 192.

the implications resulting from the use of the site for storage and distribution (B8), particularly in respect of transportation and residential amenities considerations. Consequently, the imposition of a condition restricting the use of the premises appears justified, particularly as the UCO permits (as it did at the time of the original permission) the change of use from B1 to B8. Having regard to the context of the permission as a whole and changes permitted by national legislation, I am therefore not convinced that the wording of condition 17 provides justification for the contention that conditions 15 and 16 are not effective to exclude the permitted rights afforded by Classes O and PA of the GPDO.

10. The change of use of the premises to residential accommodation would therefore constitute development for which express planning permission would be required. Whilst this has not been expressly included within the wording of the conditions, it seems clear that this could only be met by seeking planning permission through an application made to the Local Planning Authority in the first instance.
11. The Planning Practice Guidance (PPG) previously stated that conditions restricting the future use of permitted development rights should only be used in exceptional circumstances. However, this guidance has recently been amended and now states that such conditions may not pass the test of reasonableness or necessity². Turning to the reasons for imposing conditions 15 and 16, I am required to determine the appeal, having regard to present circumstances and in light of the current development plan, and it is clear that the Council sought to retain control over the planning use of the site. On the basis of the marketing information provided by the appellant as part of a pre-application enquiry, the Council accepts that the site may not be as economically viable as it should be, and no objection has been raised in respect of the loss of these industrial units.
12. Notwithstanding the above, the removal of the disputed conditions would not solely enable the appeal premises to be converted to residential accommodation through the prior approval procedure. A number of other options would then be open to the appellant, which the Council would lose control over, notably in respect of the potential effects of permitted uses on transportation and residential amenity.
13. If approval was sought to convert the appeal premises to residential accommodation, the size of the units and more generally the living conditions for future occupiers of the development, notably by reason of the site's location, are matters which could not be taken into consideration in the absence of conditions 15 and 16. These conditions therefore enable the effects on parking and residential amenity to be assessed against the requirements of the City of Southampton Local Plan Review (2015), and are justified by Policy SP1(i), which seeks to ensure that development proposals do not unacceptably affect the health, safety and amenity of the city and its citizens.
14. It is therefore considered that conditions 15 and 16 of planning permission Ref 01/01622/FUL remain necessary and reasonable and indeed pass all of the six tests listed in paragraph 55 of the National Planning Policy Framework.

² Use of Planning Conditions – Paragraph: 017 Reference ID: 21a-17-20190723.

Conclusion

15. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR