



---

## Appeal Decisions

Site visit made on 3 December 2019

**by Jonathon Parsons MSc BSc(Hons) DipTP (Cert Urb) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 February 2020**

---

### **Appeal A Ref: APP/D1780/W/19/3237602**

#### **1 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 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
- The application Ref 19/00700/PA56, dated 9 April 2019, was refused by notice dated 5 June 2019.
- The development proposed is a prior approval for the change of use from B1(a) office use to 2 x one bed flats (Class C3).

---

### **Appeal B Ref: APP/D1780/W/19/3237606**

#### **2 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 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
- The application Ref 19/00699/PA56, dated 9 April 2019, was refused by notice dated 5 June 2019.
- The development proposed is a prior approval for the change of use from B1(a) office use to 2 x one bed flats (Class C3).

---

### **Appeal C Ref: APP/D1780/W/19/3237631**

#### **3 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 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
- The application Ref 19/00698/PA56, dated 9 April 2019, was refused by notice dated 5 June 2019.
- The development proposed is a prior approval for the change of use from B1(a) office use to 2 x one bed flats (Class C3).

---

### **Appeal D Ref: APP/D1780/W/19/3237632**

#### **4 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 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).

Appeal Decisions APP/D1780/W/19/3237602, APP/D1780/W/19/3237606, APP/D1780/W/19/3237631, APP/D1780/W/19/3237632, APP/D1780/W/19/3237633, APP/D1780/W/19/3237634, APP/D1780/W/19/3237635, APP/D1780/W/19/3237642, APP/D1780/W/19/3237750, APP/D1780/W/19/3237752, APP/D1780/W/19/3237754 & APP/D1780/W/19/3237756.

---

- The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00697/PA56, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for the change of use from B1(a) office use to 2 x one bed flats (Class C3).
- 

**Appeal E Ref: APP/D1780/W/19/3237633**

**5 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 against a refusal to grant approval required under Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00696/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for the change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal F Ref: APP/D1780/W/19/3237634**

**6 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 against a refusal to grant approval required under Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00695/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for the change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal G Ref: APP/D1780/W/19/3237635**

**7 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 against a refusal to grant approval required under Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00694/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for the change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal H Ref: APP/D1780/W/19/3237642**

**8 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 against a refusal to grant approval required under Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00692/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
-

Appeal Decisions APP/D1780/W/19/3237602, APP/D1780/W/19/3237606, APP/D1780/W/19/3237631, APP/D1780/W/19/3237632, APP/D1780/W/19/3237633, APP/D1780/W/19/3237634, APP/D1780/W/19/3237635, APP/D1780/W/19/3237642, APP/D1780/W/19/3237750, APP/D1780/W/19/3237752, APP/D1780/W/19/3237754 & APP/D1780/W/19/3237756.

---

- The development proposed is a prior approval for the change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal I Ref: APP/D1780/W/19/3237750**

**9 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 against a refusal to grant approval required under a Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00691/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for the change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal J Ref: APP/D1780/W/19/3237752**

**10 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 against a refusal to grant approval required under a Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00689/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for a change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal K Ref: APP/D1780/W/19/3237754**

**11 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 against a refusal to grant approval required under a Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00687/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for a change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
- 

**Appeal L Ref: APP/D1780/W/19/3237756**

**12 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 against a refusal to grant approval required under a Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) GPDO.
  - The appeal is made by Mr Ryan English (A C English Developments Ltd) against the decision of Southampton City Council.
  - The application Ref 19/00686/PAB8, dated 9 April 2019, was refused by notice dated 5 June 2019.
  - The development proposed is a prior approval for a change of use from B1(c) light industrial use to 2 x one bed flats (Class C3).
-

## **Decisions**

1. Appeals A-L are dismissed.

## **Procedural Matters**

2. As set out above, there are twelve linked appeals on this site. Each appeal relates to a unit at an industrial estate known as City West where prior approval has been refused for a change of use to residential use. For units 1-4, the relevant use is Class B1(a) offices whilst for units 5-12, the relevant use is Class B1(c) light industrial. I have considered each proposal on its individual merits. However, to avoid duplication, I have dealt with the schemes together, except where otherwise indicated.
3. A recent appeal decision for the removal of restrictive use conditions, conditions 15 and 16 of the permission (see below) for City West has been issued on this site. The main parties were given an opportunity to provide comments on this.

## **Main Issue**

4. The main issue for each appeal is whether the proposal can be dealt with as a prior approval and if it can, whether prior approval can be granted.

## **Reasons**

5. The appeal site comprises the 12 business units with car parking which are accessed off Millbrook Road East. Planning permission was granted subject to two planning conditions which stated that:  
  
"15. Units 1-4 inclusive, on the hereby approved plan, shall only be used as Offices, Class B1(a), and for no other purpose whatsoever, including any other purpose in the Schedule to the Town and Country Planning (Use Classes) Order 1987 ('the UCO'), (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 to (the UCO), Class B1."
6. Condition 15's reason stated, "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." Condition 16's reason stated, "To enable the Local Planning Authority to retain control over the development in the interests of the amenities of the area."
7. Schedule 2, Part 3, Classes O and PA of the GPDO provides that the change of use of a building and any land within its curtilage from Classes B1(a) and B1 (c) to a use falling within Class C3 (dwellinghouses) of the Schedule to the UCO is permitted development subject to satisfying certain limitations and conditions.

8. In this regard, permitted development is subject to the limitation imposed by Article 3(4) of the GPDO, which states that:  
  
 "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the [1990] Act otherwise by this Order."
9. The dispute is whether conditions 15 and 16 are effective in excluding the permitted development rights of classes O and PA of the GPDO which would permit the change of use to Class C3 (residential).
10. In *Carpet Décor (Guildford) Ltd v. Secretary of State for the Environment (1981) 261 EG 56*, it was indicated that in the absence of a restrictive condition, the GPDO has effect by the operation of law and that a condition should be in 'unequivocal terms.' More recently, in *Dunnett Investments Limited v. Secretary of State for Communities and Local Government [2017] EWCA Civ ('Dunnett')*, it was accepted that the terms 'unequivocal terms' was now less appropriate but the words used in the relevant condition must clearly evince an intention on the part of the local planning authority to make any such exclusion.
11. In *Dunnett*, there was similarly an assessment of whether a condition was effective in excluding the permitted development rights of classes of the GPDO, which would permit a change of use to residential. In this case, at the end of the condition restricting the use, the words "without the express planning consent from the [LPA] first being obtained" was detailed. Such wording is not within conditions 15 and 16 but like the *Dunnett* case, these conditions included the words, "for no other purpose whatsoever". They also included additional wording after this ", including any other purpose in the Schedule to (the UCO), Class B1." The conditions do not explicitly exclude the operation of the GPDO but these words taken together emphatically imply this, in excluding other purposes in the UCO, such as Class C3, which the operation of the GPDO would result in. As a result, the conditions clearly evince a Council intention to exclude the operation of the GPDO.
12. In *Dunnett*, the condition in question was interpreted alongside others. In this regard, conditions 15 and 16 need to be read alongside a further condition:  
  
 "17. Unless the [LPA] agree otherwise 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, [UCO], or any equivalent provision.  
  
 Reason – In order that the [LPA] may exercise further control in the locality in the interests of the amenities of the area taking into account the servicing, access and manoeuvring provision within the site, to prevent obstruction on the adjoining highway."
13. In isolation, the interpretation and implication of condition 17 is confined to the exclusion of the specific permitted development right, namely the change of

use to Class B8 (Storage and Distribution) and does not exclude other permitted development rights. However, the condition has to be read alongside conditions 15 and 16 and their reasons.

14. In this regard, the natural and ordinary meaning of “for no other purpose whatsoever, including any other purpose in the Schedule to the UCO, (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order), Class B1” is not ambiguous. The wording is emphatic in excluding other purposes in UCO which would include Class C3. Additionally, the reasoning is clear in stating the Council wishes to retain control over the development in the interests of the securing a satisfactory form of development (condition 15) and in the interests of the amenities of the area (condition 16). Consequently, in considering these conditions together, they effectively evince an intention to identify acceptable uses, within Class B1, whilst prohibiting other uses within other UCO classes.
15. Having carefully considered the recent appeal decision on the site, there is nothing within it which would lead me to change my reasoning expressed above. Indeed, the Inspector’s reasoning supports my conclusions where it is stated that I am therefore not convinced that the wording of condition 17 proves 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.

## **Conclusion**

16. In each appeal, the proposed development is not permitted by the GPDO 2015. It is development for which express planning permission is required and that could only be granted on application made to the local planning authority in the first instance.
17. For all the reasons indicated, I conclude that each appeal should be dismissed.

*Jonathon Parsons*

INSPECTOR