



Appeal Decision

Site visit made on 9 December 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/V3310/W/18/3219052

First floor office at Winchester Farm, Draycott Road, Somerset BS27 3RP

- 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 Ashley Hann against the decision of Sedgemoor District Council.
 - The application Ref 17/18/00085, dated 4 October 2018, was refused by notice dated 30 November 2018.
 - The development proposed is change of use of the first floor from a use falling within Class B1(a)(office) to a single dwelling (a use falling within Class C3).
 - This decision supersedes that issued on 8 April 2019. That decision on appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and prior approval is granted for change of use of the first floor from a use falling within Class B1(a)(office) to a single dwelling (a use falling within Class C3) at First floor office at Winchester Farm, Draycott Road, Somerset BS27 3RP in accordance with the terms of the application, Ref 17/18/00085, dated 4 October 2018, and subject to the following condition:
 - 1) The occupation of the dwelling hereby approved shall be limited to a person solely or mainly employed or last employed as a caretaker and/or security guard at Winchester Farm Business Park and/or land at Nyland Manor (which are delineated by the blue line on drawing PL4004/5), or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
2. In accordance with Schedule 2, Part 3, Paragraph O.2(2) of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, development must be completed within a period of 3 years starting with the prior approval date.

Procedural Matters

3. Article 3 and Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (hereafter referred to as Class O), grant planning permission for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3(dwellinghouses) of the same order.

4. Permission is conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval will be required as to the transport and highways impacts of the development; contamination risks on the site; flooding risks on the site; and the impacts of noise from commercial premises on the intended occupiers of the development. The application was made on this basis.
5. Subsequent to the High Court decision, the appellant submitted a further statement and a unilateral undertaking (UU) dated 31st October 2019. The Council has had an opportunity to respond to this additional evidence and I have had regard to its comments in re-determining this appeal.
6. Since the application was refused the Council has adopted the Sedgemoor Local Plan 2011-2032. Policies D2 and D25 of this plan are relevant to the matters in dispute and I have taken them into account.
7. The submitted plans do not specifically identify an area of curtilage, beyond a pair of parking spaces. I have dealt with the appeal on this basis.

Main Issue

8. The Council is content that the proposal meets the limitations and restrictions set out in Paragraph O.1 of Class O and it raises no concerns regarding the transport and highways impacts of the development, contamination risks on the site or flooding risks. Based on the information before me, I have no reason to take a different view. The main issue in dispute is whether the proposed dwelling would provide satisfactory living conditions for its intended occupiers, having regard to the potential for noise from surrounding commercial uses.

Reasons

9. The land adjoining Winchester Farm is used for car boot sales which take place on Sundays, this being a restriction of the planning permission. The appeal building is located in close proximity to the car boot sale activity and also lies adjacent to a former lambing shed which has permission for a mixed use as a Go-Kart Racetrack and indoor Sunday market. The latter provides a covered venue for the car boot sales during the winter and periods of inclement weather.
10. Much of the land surrounding the appeal building is laid out for parking in connection with the car boot sale use. The comings and goings associated with this scale of operation are likely to be significant. However, car boot sales are not inherently noisy activities, and it is unlikely that the sound of vehicles travelling to and from the car parks and pitches would be at such a level as to create a poor living environment within the proposed dwelling. The building is double glazed, and this would provide some protection against external noise.
11. Notwithstanding this, future occupiers of the dwelling may experience some disturbance on a Sunday. This would be particularly noticeable during the summer when the car boot sale is at its busiest and when windows are more likely to be open. The appellant accepts that the proposed residential unit is not suitable for general occupation and has proposed a condition to restrict the occupancy of the dwelling to a person employed as a caretaker and/or security guard at Winchester Farm and/or land at Nyland Manor. Such a condition would be permissible under the Order as it would be reasonably related to the subject matter of the prior approval.

12. The Council raises concerns about the suggested condition, pointing out that it would relate to a wider site which contains a number of different commercial uses. Regardless of this, and the potential for future changes of landownership, any person who is employed specifically as a caretaker and/or security guard (and this should be clear from their contract of employment) would be taking up occupation in the full knowledge of the car boot sale use. Given this, and the likelihood that disturbance would be limited to a single day per week and at certain times of year, the potential for noise complaint from the occupiers of the dwelling would be low.
13. In all probability, the go-karting use would have been far louder than the car boot sale and it was a 7 day a week operation. Notwithstanding a condition prohibiting it, I understand that the large door facing the appeal building was routinely left open for ventilation purposes. If the use were to recommence the occupants of the dwelling would have little respite from intolerable levels of noise. The go-karting business ceased to operate from the site in February 2019, but the use has permission and there is the potential for it to resume.
14. The appellant acknowledges this and has provided a signed UU which would ensure that the go-karting activity could not take place concurrently with occupation of the proposed dwelling. I have noted the Council's detailed comments regarding the UU but am nevertheless satisfied that its drafting would achieve the desired objective of preventing conflict between land uses. In particular, I am content that the prohibition on go-karting set out in clauses 3.1 – 3.2 of the UU operates only when the appeal site is in actual use as a dwelling and that prohibition applies to all of the land edged red on the UU plan, regardless of the precise location of the track itself. Furthermore, clause 9.1 need not refer to the planning permission granted on this appeal, given that the obligation is triggered by the actual use of the appeal site as a dwelling.
15. Overall, I consider that the UU would be a more effective and robust mechanism than the condition previously suggested by the appellant, and it would not prejudice the Council's ability to consider any future applications for change of use on their merits.
16. The Council has expressed the concern that, should the building revert to agricultural use, this would also result in noise. According to the appellant, the building would be used for storage of farm machinery and equipment. Clearly this may necessitate some comings and goings but, given the degree of separation between the buildings, I am not persuaded that this would have a significant adverse impact on the living conditions of occupiers of the dwelling, and certainly no more so than its use as an indoor Sunday market which I have already deemed to be compatible with the proposed dwelling.
17. Subject to the UU and the planning condition put forward by the appellant in respect of restricting occupancy of the proposed dwelling, I am satisfied that there would be no unacceptable noise impacts from commercial premises. There would be no conflict with paragraph 182 of the National Planning Policy Framework (the Framework) insofar as it seeks to ensure that development can be integrated effectively with existing businesses. Furthermore, there would be no conflict with the requirements of Framework paragraphs 127 and 180 that development ensures a high standard of amenity for future occupiers and avoids noise giving rise to significant adverse impacts on health and the quality of life.

Conclusion

18. For the above reasons, I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR