



Appeal Decision

Site visit made on 7 July 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

Appeal Ref: APP/Y9507/W/20/3247274

2 The Domes, Durford Road, Petersfield, Hampshire, GU31 4EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order, Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr David Graver of David Graver Building and Property Services Ltd against the decision of South Downs National Park Authority (SDNPA).
 - The application Ref SDNP/19/03752/PA30, dated 1 August 2019, was refused by notice dated 19 September 2019.
 - The development proposed is a change of use of existing B1 Light Industrial Premises to a dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made to the SDNPA for a prior approval under Schedule 2 Part 3 Class PA (meaning a change to residential from Class B1(c) (light industrial). Notwithstanding this fact the Authority determined the application as if under Class O as referred to in the Decision Notice (meaning a change from Class B1(a) offices) even though the description in the decision notice remained a change of use from light industrial to a dwelling. The covering letter to the application and the declaration given in evidence clearly refer to a light industrial use and I have no evidence that any change to this was agreed between the SDNPA and the appellants. I have therefore dealt with the appeal on the basis which it was made to the SDNPA under Class PA and not in respect of Class O as referred to in the decision notice.
3. The Planning Practice Guidance (PPG) advises that the basis for determining proposals which are subject to prior approval under the GPDO is that the principle of development is already established. However, this is qualified with a number of exclusions which are not permitted development. In this case the matters in dispute are the nature of the use and the extent of the floorspace.
4. The SDNPA included four reasons for refusal in the decision notice. Reason 3 relating to lack of information in respect of flood risk and Reason 4 in relation to the compatibility with adjoining uses. In evidence the SDNPA have clarified that these two reasons are no longer being pursued as it is accepted that, should a prior approval be forthcoming, such matters could be dealt with by conditions. I have had regard to this change of position.

Main Issues

5. Having regard to the above, the main issues are: a) whether the proposal would meet the requirements of Class PA; and b) whether it would fulfil the requirements of Class PA paragraphs PA.1(b) and (d) of the GPDO which relate to the use and size of the building respectively.

Reasons

Use of the Building

6. Development is not permitted by Schedule 2, Part 3, Class PA of the GPDO where the building in question was not used solely for a light industrial use on 19 March 2014 (the Relevant Date) 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.
7. The appellants advise that an application for a proposed lawful use to change 235 square metres to B1 office was approved in July 2012¹. The appellants place emphasis on the interchangeability between office and light industrial use. That flexibility is acknowledged, however the lawful use referred to, which was not provided in detail in evidence, but which is referred to in the same terms by both parties, relates to part rather than all of the building. There are also references from the SDNPA of earlier certificates of lawfulness for use as a storage and distribution centre.
8. I have no evidence to support the appellants contention that the SDNPA have accepted the building was not in B8 use on the relevant date nor that the SDNPA have accepted that the building was used solely for class B1 purposes at that time. In the circumstances outlined by the appellants and the SDNPA the evidence points to a mixed use of office/light industrial and B8 storage.
9. The appellants have more recently made a statutory declaration as to the use of the land solely and exclusively for light industrial purposes since 2014. This is not consistent with the lawful use referred to from 2012 which related to only part of the building. In any event the evidence does not demonstrate a definitive position on the lawful planning use of the whole building, this would be a matter for the SDNPA in the first instance.
10. These facts lead me to conclude that the evidence does not convincingly support the appellants contention that the building was in a single use rather than a mixed use on the relevant date. I note that the declaration included with the appellants final comments was a document that the SDNPA were not able to take into account in reaching their decision as it postdates the appeal. Indeed, the SDNPA have taken issue with the submission of the declaration on the basis that it is not a document they have commented on nor which has been available for public comment and should be discounted.
11. Taking all of the above into account I am not persuaded that the use of the building, on 19 March 2014, was solely for a light industrial use. It therefore does not meet the requirements of para PA.1 (b) of the GPDO and a change of use to a dwelling house would not be development permitted by the Order.

¹ SDNP/12/00578/LDP

Building Size

12. The appellants state that the floorspace does not exceed 500 square metres in size. A cross section diagram has been provided to indicate a building diameter of 25 metres. However, their measurement is an internal dimensions and not the gross floor area which is the basis on which the calculation should be made in respect of the GPDO.
13. The appellants refer to the GPDO wording of gross floorspace and to a dictionary definition which defines floorspace as that which is 'free and available' and suggests that the GPDO does not give a specific method of how to calculate it. I disagree, the GPDO is clear in its reference to 'gross floorspace' (rather than 'net floorspace') and I have nothing before me to suggest that it is the 'usable' dimension of the building which I should use to establish the size of the building in relation to the GDPO provisions. In any event I saw on my site visit that, apart from a small office area at the rear of the building, the whole of the structure is in use as a single space for joinery activity or timber storage, including parts of the dome which are of restricted head height. On this basis the whole of the building is being used.
14. The plan supplied with the appeal is an Ordnance Survey Masterplan and indicates the diameter of the building to be around 27.5 metres which gives a gross floor space of 594 square metres. In so far as the measurement is concerned, I take the OS plan to be demonstrably accurate. The SDNPA indicate the size to be greater at 606 square metres. Even taking the lower of these two figures the building exceeds the size limit set down in PA.1 (d).
15. Taking the above factors into account the proposal would not meet the required test in the GPDO and cannot therefore be development permitted by the Order.

Other Matters

16. In my preliminary matters I outlined that the SDNPA have confirmed that they do not wish to contest matters in their refusal reasons 3 and 4 clarifying that such matters are capable of being dealt with by conditions. However, given my findings in relation to the requirements of the GPDO there is no need for me to consider these matters further as they would not alter the outcome.
17. I note that representations have been made in relation to other matters including the content of the Neighbourhood Plan and the provisions it seeks in protecting business use, and to matters such as the effect on wildlife and the risk of flooding. However, the PPG makes it clear that prior approval² is a light-touch process where the principle of development is established for developments which comply with the GDPO regulations and does not seek to replicate the planning application system. These matters do not alter my conclusion.
18. Reference has been made to an Article 4 direction which is said to restrict permitted development rights. However, there has been no substantive evidence to demonstrate any such restriction and the SDNPA have not referred to any such limitations being in force. The reference to the possible existence of an Article 4 direction does not affect my findings.

² Paragraph: 026 Reference ID: 13-026-20140306

19. I note the appellants view that the conversion of the building to a dwelling would offer the best use of this asset however this is not a matter which I can take into account in respect of the GPDO assessment relating to prior approval.

Conclusion

20. For the above reasons I conclude that the proposal does not meet the requirements of under Schedule 2, Part 3, Class PA sections PA.1(b) and (d) of the GPDO and planning permission would therefore be required to effect a change of use to a dwelling. Consequently, the appeal is dismissed.

Janet Wilson

INSPECTOR