



Appeal Decision

Site visit made on 28 January 2020

by Jonathon Parsons MSc BSc DipTP Cert (Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2020

Appeal Ref: APP/Y9507/W/19/3241281

Barn at Downlands Farm, Ovenhay Copse Lane, Priors Dean, Hampshire GU32 1BP

- 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 R of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr & Mrs David Bridger against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/01283/PA3R, dated 14 March 2019, was refused by notice dated 24 May 2019.
 - The development proposed is a prior approval for the change of use of agricultural building to a flexible use-guest house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Main Parties' comments have been considered on the *Royal London Mutual*¹ judgement, referred to in the *Dunnett* judgement².

Application for costs

3. An application for costs was made by Mr & Mrs David Bridger against the South Downs National Park Authority. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the relevant planning condition attached to the original permission would prevent reliance upon Class R of the GPDO.

Reasons

5. The existing building is an agricultural barn. Permitted development under Class R of the GPDO comprises development consisting of a change of use of an agricultural building and any land within its curtilage to a flexible use falling within Class A1, Class A2, Class A3, Class B1, Class B8, Class C1 or Class D2 of the Schedule to the Use Classes Order (UCO). In order to benefit from any

¹ *Queen on the Application of Royal London Mutual Insurance Society Limited v Secretary of State for Communities and Local Government* [2013] EWDC 3597 (Admin).

² *Dunnett Investments Limited v Secretary of State for Communities and Local Government, East Dorset District Council* [2017] EWCA Civ 192.

- planning permission for this class granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing permission, Article 3(4).
6. In this proposal, a condition attached to the planning permission for the barn restricts development by stating that "The building hereby permitted shall be used only for agricultural purposes as defined in Section 336(1) of the Town and Country Planning Act 1990" (TCPA). The condition's reason was "To ensure that the building is used for agricultural purposes only since it lies within a rural area to which restrictive planning policies apply and where only that development needed to meet the essential requirements of the locality is normally permitted." The condition does not make explicit reference to both the GPDO and the prevention of its application.
 7. However, parties have drawn my attention to various relevant judgements; *Dunoon Developments*³, *Trump*⁴, *Dunnett*, *Carpet Décor*⁵. These judgements, taken together with other referred judgements within them, have identified important legal principles relevant to this proposal.
 8. A planning condition on a planning consent can exclude the application of the GPDO. Exclusion of the GPDO can be both explicit and implied. In *Carpet Décor*, it was determined that in the absence of a condition, the GPDO has effect by the operation of law and therefore, that a condition should be in 'unequivocal terms'. However, in '*Dunnett*', it was accepted that the term was now less appropriate, with the modern trend away from myopic focus upon words without proper reference to their full context. To exclude the GPDO, the words used in the relevant condition, taken in their full context, must clearly evince an intention on the part of the local planning authority to make such an exclusion. In '*Dunnett*', it was held that the context in which a condition had to be construed included the planning history of the site and more importantly still the reason for the condition.
 9. In '*Dunnett*', the disputed condition's wording and context was different to the current proposal. The second part of the '*Dunnett*' condition included a tailpiece "and for no other purpose whatsoever, without the express planning consent from the local planning authority." The reason for imposing the condition was also more specific to the site. However, it is inevitable that every case will be different and the application of the legal principles depends on the specific facts, namely the wording of the condition and its full context.
 10. In this appeal proposal, the condition states that "The building hereby permitted shall be used only for agricultural purposes...", whereas the '*Dunnett*' condition states "This use of this building shall be for purposes within". The condition in this appeal lacks the tailpiece of the '*Dunnett*' condition but it uses the word "only" after "shall be used". Such a combination of words gives a strong impression that other uses are to be excluded. This is supported by *Royal London Mutual* where it was held that the use of the word "only" was emphatic, meaning solely or exclusively, and that was its plain and ordinary meaning. In that case, a condition's restriction to only retail uses, other than those stipulated of a non-food nature, was found to imply exclusion of the UCO

³ *Dunoon Developments v Secretary of State for the Environment and Poole Borough Council* [1993] 65 P&CR 101).

⁴ *Trump v The Scottish Ministers* [2016] 1 WLR.

⁵ *Carpet Décor (Guildford) Ltd v Secretary of State for the Environment* (1981) 261 EG 56.

and Class A1 rights. Therefore, these words used in the condition support the Authority's position in excluding other uses under the permission.

11. Turning to the condition's reason, it is of a generalised nature and the reasoning uses the word 'normally'. However, such a word has to be read as part of the reason as a whole. In this regard, the reason reiterates that the building should be used for agricultural purposes only "since it lies within a rural area to which restrictive planning policies apply". The reason then details the nature of these restrictive policies where it indicates "where only that development needed to meet the essential requirements of the locality is normally permitted." The word 'normally' indicates uses other than those meeting essential requirements are the exception. Therefore, taken as a whole, the reason confirms the Authority's overall intention to exclude other uses because of the agricultural use only restriction and the restrictive nature of policies for the area.
12. The condition does not indicate that planning permission could be expressly granted by the local planning authority. By logical extension, it is stated that it must if the condition excludes the application of the GPDO. However, it is established by statute that express planning permissions can be granted for further changes of use in planning and therefore, the source of future express planning permission does not have to be written or read into a condition. Given this, a condition, however worded, could not exclude this right.
13. Furthermore, the procedure for the planning permission through the GPDO is different in that it is subject to Article 3(4) of the Order whereby development must not be contrary to any condition on an existing permission. Therefore, there is an additional requirement on assessing conditions for applications seeking planning permission through the GPDO which is not the case in respect of that for express planning permission. Consequently, the condition's lack of definition, in not stating the source of any future express planning permission, does not hinder the reasonable interpretation of the condition.
14. There is no officer's report for the original barn proposal. There was a previous GPDO planning permission for a smaller change of use of the barn subject to an almost identical restrictive condition. In this permission, the condition's wording differed in its extra wording, "and if at any time the building ceases to be used or required for such purpose it shall be removed and the site re-instated to the satisfaction of the Planning Authority." In *Royal London Mutual*, the condition included a tailpiece and it was found to emphasise that there were no other A1 rights other than those granted by the planning authority. However, the implied exclusion of planning permission through the GPDO remains strong through the natural and ordinary meaning of the condition and its reasoning for the reasons indicated.
15. Furthermore, there is no evidence that a detailed assessment was made of the wording and reasoning of the barn condition in respect of the previous planning permission for the change of use. This proposal must be made on the basis of all evidence before me taking into account guiding legal principles and the facts in relation to the current proposal. For the reasons indicated, the condition in its full context clearly evinces an intention to remove GPDO rights.
16. If planning permission had been granted either by the GPDO or expressly, then the original barn planning permission would have been superseded and the restrictive use condition would not be engaged. However, this has not occurred

and the proposal before me requires the consideration of the condition because of Article 3(4) of GPDO. It is argued that it was entirely possible that the condition was written in the way that it was, to ensure that no ancillary or incidental uses (e.g. residential or office) for a farm or agricultural use were undertaken in the building. However, such uses are clearly not primary uses, such as those listed within Class R, and there is no evidence before me within the condition or reason that such uses were to be excluded.

17. In a 2018 appeal⁶, an Inspector concluded that a condition did not prevent the application of the GPDO and a permitted Class C3 change of use. The condition restricted premises to an office use and for no other purpose with Class B1 of the UCO. However, the reason stated to "enable the local authority to exercise control of the type of use within this category". The use of the word "category" was considered a synonym for 'Class' within the UCO and the condition was not found to refer to preventing the application of the GPDO, except for other uses within the B1 use Class. Furthermore, the condition before me uses the word "only" in restricting use which is not detailed in the condition wording in this other appeal. For these reasons, the appeals are materially different.
18. Recent photographs purportedly show the implementation of the previous barn permission through the GPDO and an Authority letter shows that a CIL payment is not required. It is not the purpose of this type of appeal to make a determination on an existing or proposed use which is dealt with under different sections of the Town and Country Planning Act 1990. Nevertheless, without prejudice to any decision on these matters, the evidence clearly falls considerably short of what would be expected for me to consider in terms of lawfulness. In this regard, the photographs show a limited characteristic of a class C3 use, just the use of a kitchen area on one occasion.
19. Planning Practice Guidance states that conditions restricting the future use of permitted development need to be precisely defined, by reference to GPDO, once they passed the exception test. It would have been possible to draft the condition to reflect this, an example of which is given by the appellants but it is not my role here to consider whether the condition meets the tests set out in the PPG but rather whether it clearly evinces an intention to remove GPDO rights.
20. The Authority has also confirmed permitted development for alternative uses under GPDO at Sandhill Farm in Picketts Hill, Headley and Binswood View Business Centre, Hartley Lane in Oakhanger, Bordon. In these cases, building conditions restricted use to agriculture in a similar manner, with additional tailpiece limbs requiring their removal upon the use ceasing/not being required. An inconsistent approach of the Authority in determining these proposals has been stated. However, the decision notices and officer reports do not demonstrate how the proposals have taken into account guiding legal principles and the facts, the conditions and their full context. In the absence of this, limited weight is attached to any inconsistencies in the Authority's approach.
21. For all the reasons indicated, the condition taken in its full context, including consideration of its reason, clearly evinces an intention to exclude the application of the GPDO.

⁶ APP/N5090/W/18/3197410 Supported Fostering Services, 115C Brunswick Park Road, New Southgate, Barnet, London N11 1EA.

Conclusion

22. The condition clearly evinces an Authority intention to exclude the operation of the GPDO and the development is not permitted by the GPDO for all the reasons indicated. 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. For all the reasons indicated, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR