



Appeal Decision

Site visit made on 30 June 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 04 September 2020

Appeal Ref: APP/D0515/W/20/3249533

Unit 1, How Fen, New Road, Chatteris, Cambridgeshire, PE16 6XP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Article 3, Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended for change of use from Class B1(c) (light industrial) to a dwellinghouse (Class C3)).
 - The appeal is made by Peter Crout against the decision of Fenland District Council.
 - The application Ref F/YR19/0959/PNC07, dated 17 October 2019, was refused by notice dated 23 December 2019.
 - The development proposed is change of use of light industrial unit to residential unit as per attached plans.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Order makes it clear that such development is not permitted if the building was not used solely for light industrial use on 19 March 2014 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.
3. In addition, if the application benefits from the rights set out above it is subject to a prior approval requirement, under Part 3, Class PA of the Order that regard is to be had to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if it were a planning application. This is set out in section (10), paragraph W of Part 3 of the Order.

Main Issues

4. The main issues are: 1) whether or not the development is permitted with particular reference to whether the building was used solely for Use Class B1 (c), light industrial use as at 19 March 2014 and therefore benefits from the permitted development rights to be used for dwelling houses; 2) If the development is permitted, the effect on the living conditions of the occupiers of the proposed dwellings due to the presence of a kennels next to the appeal site, and therefore whether prior approval should be granted.

Reasons

Background

5. The site lies at the side of a road and is accessed via a concrete verge crossing. It lies behind a fence and contains overgrown hard standings and the building which is the subject of this appeal. Next to the site lies an electrical wholesaler, a dwelling, dog kennels and open agricultural land.
6. The building is tall enough to accommodate two storey dwellings and is at right angles to New Road. At the time of my visit it was being used for domestic storage, including mattresses, chairs, duvets, and sinks, together with a touring caravan. Other parts of the building had been partitioned off. In a small part of the building, opposite the entrance door, there was a work bench with what appeared to be saws.

Use of the building for Class B1(c) as at 19 March 2014

7. The building was originally built as a poultry shed and had planning permission for change of use to light industrial. Documents have been supplied which show that the building was being used for car repairs/workshop and residential use between around November 2013 and at the date a Planning Contravention Notice (PCN) was issued on 22 April 2015. The appellant has confirmed that the car repair and residential use ceased in 2015.
8. There appears to be common ground between the tenant and the agent acting for Namulas Pension Trustees Limited (for the owner of the site and the building), that a lease for the site and the building was due to be signed on 28 August 2013, that specified 'Garage Car Repairs' as the intended use. This lease was not completed and a 'tenancy at will' was signed on 19 November 2013 for the tenant to rent the building and site from the appellant.
9. The Council issued a PCN on 22 April 2015. In his replies to the PCN the tenant confirms that residential use of the site started in August 2013, that the maintenance and repair of motor vehicles started on 1 November 2013 and that the landlord rented the building for the tenant to 'live in' and to 'repair cars and sales'[sic].
10. On the other hand, the appellant states that when he saw the tenant in occupation in March 2014 the activities being undertaken 'could only be described as B1(c) light industrial usage' and that the tenant had taken up residence early in 2015 and was trading as A and D Motors. He goes on to state that the first year of the tenant's occupation was lawful B1(c) use.
11. Two letters of support are provided. The first states that equipment (a trailer and a mast) were manufactured at the site between February and summer 2014. No other information is supplied such as orders, invoices or receipts to confirm this work took place. The second letter appears to confirm that the tenant was living at an address away from the site between January/February and November/December. The letter appears to stop short of confirming the actual year that the tenant lived at this alternative address.
12. The appellant has argued that car repairs fall within Class B1(c) of the UCO. For a use to fall within Class B1(c) of the UCO it must be capable of being

carried out in any residential area without detriment to the amenity of the area by reason of noise, vibration, smell, fumes, soot, ash, dust or grit. The nature of the activities involved in a car repair business would in all likelihood generate noise through the use of machinery and the running of engines and would generate fumes and smoke from engine exhausts at the very least. These activities are likely to cause detriment to the amenity of any residential area. Therefore, it is likely that such a use would fall into use class B2 general industry rather than B1(c) light industry.

13. The appellant argues that because the use as a car repair business and residential use of the building were not lawful, the approved use of the site should be light industrial, Class B1(c) on 19 March 2014. Schedule 2, Part 3, Class PA of the Order is precise in stating that changes of use in accordance with Class PA are not permitted if the building was not used solely for a light industrial use on 19 March 2014. If a use does not meet this requirement then any subsequent proposed change of use would not be permitted development in terms of Class PA of the Order.
14. The uses of the building cannot be 'de minimis', as argued by the appellant, even if they are 'temporary' in nature, if they have supplanted the light industrial use on the specified date. In terms of this part of the Order, the building was either in use for light industrial purposes on the required date or it was in some other use. If it was in some other use on that date, then it cannot benefit from the Class PA rights.
15. The appellant has also argued that the light industrial use of the building has not been abandoned. The test here is not the same as that for abandonment. The evidence has to demonstrate that the building was in use for light industrial purposes on the required date for Class PA to apply, if the building was in some other use on that date then the rights conferred by Class PA do not apply.
16. I have to decide on the balance of probabilities what the use of the site was on 19 March 2014 based on the evidence before me. It is clear to me that the description of the activities taking place at the site and the dates they took place are more specific, and therefore compelling, in the evidence supplied by the managing agent for the trust (DMH Stallard letter dated 11 May 2015) and the responses given by the tenant in the PCN. The evidence supplied by the appellant, and in the two supporting letters, lack detail both in terms of the activities taking place at the site and the dates on which they were allegedly taking place.
17. Moreover, on the date of my site visit I found that the building was being used more for the storage of domestic paraphernalia than for light industrial use. It therefore had the characteristics of a mixed use. Based on the evidence before me, on the balance of probabilities, the building was not used solely for Class B1(c). It cannot therefore benefit from the permitted development rights set out in Part PA of the Order.

The living conditions potential occupiers of the proposed dwellings

18. If the application benefits from the rights set out above it is subject to a prior approval requirement, under Part 3, Class PA of the Order that regard is to be had to the National Planning Policy Framework (the Framework), so far as

relevant to the subject matter of the prior approval, as if it were a planning application. This is set out in section (10), paragraph W of Part 3 of the Order.

19. However, as I have found above that the building does not benefit from the permitted development rights set out in Part 3, Class PA of the Order there is no need to consider its compliance with the prior approval matters as the development lies outside the scope of this Class.

Other Matters

20. Reference has been made throughout the appellant's statement concerning the behaviour of the Council during the processing of this and previous applications. I have noted these comments, however they have not had a bearing on my determination of this appeal.

Conclusion

21. Having regard to all the matters before me I therefore dismiss the appeal.

Peter Mark Sturgess

INSPECTOR