
Appeal Decision

Site visit made on 21 September 2020

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/Z1510/W/20/3253239

The Workshops, Wethersfield Road, Sible Hedingham, Essex, CO9 3LB.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant approval required under a development order.
 - The appeal is made by A Nicholson against the decision of Braintree District Council.
 - The application Ref. 20/00204/COUPA, dated 22 January 2010, was refused by notice dated 11 March 2020.
 - The development proposed is the change of use of a building from light industrial (Class B1(c) to 2 dwellings (Class C3).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed change of use accords with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended, to be 'permitted development' and is not restricted by a condition imposed on a previous permission.

Reasons

Background

3. The material change of use of a building or land is development under the Act which normally requires express planning permission. However, the Town and Country Planning (General Permitted Development) (England) Order (now referred to as GPDO) generally grants permission for specific forms of development and Part 3 of Schedule 2 of the Order deals with changes of use. Relevant to this appeal is Class PA which permits the change of premises in light industrial use to dwellinghouses. Nevertheless, Article 3(4) of the GPDO indicates that nothing in the Order permits development contrary to any condition imposed by any planning permission granted.
4. The Council submits that the provisions of Class PA do not apply in this case as the 1982 permission which allowed the construction and use of the premises as a workshop for the manufacture of motorcycle sidecars (P/BTE/0444/82/OT/H) was subject to a condition (No.6) as follows:

The building hereby permitted shall be used for purposes within Class III (Light Industrial) of the Schedule of the Town and Country Planning (Use Classes) Order, 1972 and for no other purpose without the prior approval in writing of the local planning authority.

Nature of the condition

5. National guidance on the use of planning conditions is given in the Planning Practice Guidance (PPG) and paragraph 017 advises, in effect, that a condition to restrict the future use of 'permitted development rights' can be imposed where it passes the tests of *reasonableness* and *necessity*, and that the condition needs to be precisely defined with reference to the relevant provisions of the GPDO to make it clear what rights have been limited or withdrawn.
6. In this case condition 6 above does not refer to the GPDO but it clearly specifies the use class that is permitted and states that 'no other purpose' is allowed without the 'prior approval' of the Council.
7. The main parties accept that the use of the term 'prior approval' in 1982 was well before the same words were used in subsequent amendments to the GPDO to require a specific process of notification to the Council for various types of 'permitted development'. Therefore, the term can be construed as meaning the formal agreement of the Council and this would normally be undertaken by the submission of a planning application for formal determination, rather than simply the act of making a Prior Approval application, or an informal written request, as the appellant submits.
8. In the interpretation of the wording and effect of condition 6, it is useful to consider the similar case of *Dunnett Investments Ltd*¹. In that case the relevant condition did not refer to the GPDO but the Court of Appeal held that 'express planning consent from the LPA' meant a grant of permission by the LPA. Taken with the phrase 'and for no other purpose whatsoever' the Court held that the condition excludes a grant of permission by the GPDO.
9. In the current appeal the fact that the condition only refers to 'no other purpose' rather than 'no other purpose whatsoever' does not materially change the clear meaning of the words. The addition of 'whatsoever' only adds embellishment.
10. In short, the imposition of the condition continues to take away permitted development rights to change the premises to a different use outside of the light industrial class and the appellant has not received a formal approval from the Council for a different use. This can only be changed by the successful submission of a planning application to delete the condition or to make a full planning application for a change of use in its own right. Therefore, the permitted development rights normally afforded by Class PA cannot be exercised in this case.

Conclusion

11. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

¹ *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2016] EWHC 534 (Admin); 2017 EWCA Civ 192