



Appeal Decision

Site Visit made on 25 May 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2021

Appeal Ref: APP/D1265/W/20/3266012

Thanes Lane Yard, Thanes Lane, Motcombe SP7 9LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, 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 John Heenan against the decision of Dorset Council.
 - The application Ref 2/2020/0925/OTDWPA, dated 29 May 2020, was refused by notice dated 28 August 2020.
 - The development proposed is to change use of existing office and ancillary land to a residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. As a result, uses which previously fell under Classes A1, A2, A3, B1, D1 and D2 are replaced by Class E in Part A of Schedule 2. However, transitional provisions apply until 31 July 2021, whereby any references to uses or use classes specified in the Schedule to the Use Classes Order, are to be read as meaning the uses or use classes that applied on 31 August 2020, for the purposes of making a prior approval application. The appeal can therefore proceed under the transitional arrangements.

Main Issues

3. The main issues are:
 - a) Whether the proposal satisfies the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) to be permitted development under Class O of Part 3 of Schedule 2, having particular regard to whether the appeal building has a B1(a) use; and, if so,
 - b) The impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

4. The appeal site lies in a rural location, and comprises an open yard, with a range of buildings along its north-eastern boundary. These buildings are mainly used for the storage of equipment and vehicles associated with the appellant's tree surgery business. At the north-western end, however, is a two-storey

- building, which is used as an office for the business. The land in front of the buildings is used for vehicle parking and for the open storage of logs and wood chippings. Therefore, the entire site is used, in one way or another, as part of the overall tree surgery business.
5. The proposed conversion works are limited to the office building, which would become a two-bedroomed house. However, the red line encompasses the whole site, and it is clear from the appellant's submissions that the other buildings would be used for storage associated with the proposed dwelling. Furthermore, it is stated that the tree surgery business would not continue to operate from the site. The proposal is, therefore, for the change of use of the office building and all of the surrounding land to residential use.
 6. Both parties have provided evidence of the planning history of the site. This shows that the current use stems from a planning permission granted in 2012¹ for "*change of use from agricultural to commercial/business use and erect two storey extension to form office and staff room*". The appellant contends that the effect of this permission was to grant a B1(a) permission for the new extension, and a change of use of the existing buildings to storage space, which would be ancillary to the office and the off-site arboricultural business. The appellant states that the application form made it clear that the B1(c) commercial/business use was applied for as an ancillary function to the office element. However, having looked carefully at the application form, I do not find this to be the case.
 7. From the evidence, including my own observations, the site is in use as a single planning unit that serves as the operational base for the tree surgery business. This use encompasses a range of elements other than the office, including covered storage of equipment, open storage of logs and chippings and vehicle parking. It also appears, from the planning application form and the officer's report for the original permission, that maintenance of machinery takes place on site, as well as some logging and burning of arisings. Within this overall range of uses, the office comprises a comparatively small area, and cannot be considered the primary use of the site.
 8. It is argued by the appellant that the office has a B1(a) use that is separate from the adjacent commercial use. However, there is no evidence that it has been used for purposes unrelated to the arboricultural business. Its location within the yard, its lack of enclosure from the rest of the site, and its functional relationship with the other elements of the use, lead me to conclude that it is not a separate planning unit. Rather, it is a constituent part of the wider arboricultural business on the site. It is a matter of dispute between the parties whether this wider use amounts to a B1(c) use, or is *sui generis*, but, in either case, the office element is an integral part of the overall use of the site, so it does not have its own B1(a) use.
 9. Furthermore, Article 3(4) of the GPDO makes it clear that, to qualify as permitted development, the proposal must not be contrary to any condition on an existing planning permission. Condition 3 of the planning permission granted in 2012 limits the area of land within which the commercial/business use can take place to that edged red on the submitted plan. It also restricts the use of that area to an arboricultural and tree surgery business, and prohibits its use for any other purpose. The office building lies within the red edged area, so

¹ Local Planning Authority reference 2/2011/1295/PLNG

is covered by the condition. The use of the building as a dwelling would be contrary to the prohibition to use the area for any other purpose, so would be in breach of the condition.

10. I am mindful that the reason for the condition refers to the arboricultural and tree surgery business as a *sui generis* use, and that this is disputed by the appellant. Nevertheless, the condition itself is clear that the area should only be used for and in connection with the arboricultural and tree surgery business, and for no other purpose. Therefore, regardless of the use class attributed to the business, the use of the building as a dwelling would be an "other purpose", which would be prohibited by the condition. Consequently, the development is not permitted by the GPDO. 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.
11. In conclusion, the building does not have a B1(a) use, and its use as a dwellinghouse would conflict with a condition of an existing planning permission. The proposal does not, therefore, satisfy the requirements of the GPDO to be permitted development under Class O of Part 3 of Schedule 2.

Impacts of noise from commercial premises

12. As I have concluded that the proposal is not permitted development by virtue of Class O of the GPDO, it does not now fall on me to assess the impacts of noise from commercial premises on the intended occupiers of the development under Paragraph O.2.

Conclusion

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

Nick Davies

INSPECTOR