

Appeal Decision

Site visit made on 26 April 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/F5540/W/21/3280148

Falcon House, 115-123 Staines Road, Hounslow TW3 3LL

- 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(1) and 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 K Buttar (BCL Group Ltd) against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 01054/115-123/PA1, dated 1 April 2021, was refused by notice dated 1 June 2021.
 - The development proposed is described as, "Change of use of an office to provide 53 flats, secure cycle spaces within the building, refuse storage and associated works. All habitable rooms benefit from adequate sunlight and daylight to accord with BRE Guidance".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), planning permission is granted for offices to dwellinghouses.
3. The Council refused the application on the basis that, in their opinion, it fails to comply with the terms of Article 3(4) of the GPDO, which provides that nothing in the GPDO permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990 otherwise than by the GPDO. In doing so, the Council made reference to condition No 3 of planning permission reference 1054/115-123/P23, granted in 1989, which provides that, 'The premises shall be used only for Class B1(a) and for no other purpose (including any other purpose in Class B1 of the Town and Country Planning (Use Classes) Order 1987'.
4. The appellant disputes the Council's interpretation of condition No 3 of the 1989 permission. For various reasons, which are considered in full below, the appellant considers that condition No 3 does not prevent the operation of the GPDO in relation to Falcon House. This dispute is reflected in the main issue, below.

Main Issue

5. The main issue in this appeal is whether or not the proposed development would be contrary to condition No 3 of planning permission reference 1054/115-123/P23, by virtue of Article 3(4) of the GPDO.

Reasons

6. The appeal site comprises a 5-storey office building with a basement and ground-level parking facilities. It is located on the corner of Staines Road and Hospital Road, and is situated in a mixed commercial and residential area. It is common ground between the main parties that the lawful use of Falcon House is Class B1(a) (as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended)) (UCO)) and that the site is not located within an area where the Class O permitted development right is excluded. Class B1(a) relates to use as an office other than a use within Class A2 (financial and professional services).
7. The proposal seeks to change the use of the building from Class B1(a) use to Class C3 use, via Class O, to create 53 flats. Class B1(a) is now effectively Class E(g)(i) within the UCO but this does not affect the operation of the GPDO to this appeal.
8. In dealing with the dispute as to whether condition No 3 of the 1989 permission precludes the operation of Class O, by virtue of Article 3(4) of the GPDO, I will deal with matters of principle first, before looking at condition No 3 in detail.
9. In this regard, condition No 3 could never have the effect of preventing an application for planning permission being submitted to the Council for a change of use outside of Class B1. Technically speaking, the GPDO also provides a grant of planning permission, subject to certain limitations and restrictions. However, as Article 3(4) of the GPDO states that nothing in the GPDO permits development contrary to any condition imposed by any planning permission, it is clear that conditions on a previously-granted planning permission can restrict the operation of the GPDO.
10. In a similar vein, the appellant has advanced the argument that where the GPDO grants planning permission for an entirely different use of a property, conditions that were specifically addressed to the actual use of the property and attached to the earlier permission no longer apply. However, Article 3(4) of the GPDO provides a specific restriction whereby no GPDO-permitted development can take place which is contrary to any condition imposed by any planning permission. Therefore, properly-worded conditions on a planning permission which prohibit uses covered by the GPDO will preclude the operation of the GPDO in relation to those uses. The question in this case is whether condition No 3 does so.
11. It was held in *Trump*¹ that when a court is concerned with the interpretation of words in a condition in a public document it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole, and that this is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent,

¹ *Trump International Golf Club Scotland Ltd & Another v the Scottish Ministers* [2015] UKSC 74

any other conditions which cast light on the purpose of the relevant words, and common sense. Similarly, it was held in *Lambeth*² that the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context and in the light of common sense.

12. In this regard, the words, 'The premises shall be used only for Class B1(a)...', in condition No 3 restricts the use of the building to Class B1(a) only. This part of condition No 3 reflects the description of development given in the 1989 permission, which specifically mentions an 'office building'. The inclusion of the word 'only' indicates that planning permission is not granted for other, non-Class B1(a) uses.
13. The following words, '... and for no other purpose...', prohibit the building to be used for any purpose other than Class B1(a). 'Purpose', to my mind is synonymous with 'use' in this context. When read in conjunction with the immediately preceding text it is clear that condition No 3 strictly limits the use of the building to Class B1(a) only, with no other uses being allowed to take place under the terms of the 1989 permission.
14. The final words, '... (including any other purpose in Class B1 of the Town and Country Planning (Use Classes) Order 1987...', adds an additional prohibition, which prevents the building being used for any other use within Class B1 (apart from Class B1(a)). Given that, where changes of use are involved, if the new use falls within the same use class, planning permission is not required, it appears likely that this text was included to make it clear that the 1989 permission was not permitting the building to be used for Classes B1(b) & (c), in addition to also prohibiting any other uses outside of Class B1(a).
15. Hence, it follows that the natural and ordinary meaning of the words used in condition No 3 do not convey the meaning that condition No 3 is merely seeking to prevent changes *within* Class B1. Rather, although condition No 3 does prevent changes within Class B1, this is an additional prohibition, which follows on from the much more expansive, '... and for no other purpose...', prohibition. Indeed, the word 'no' found in, '... and for no other purpose...', indicates that all other purposes are excluded.
16. Condition No 3 differs from *Dunnett*³ in that it does not contain the word 'whatsoever' which was contained within the text, '... and for no other purpose whatsoever...', in the condition considered in *Dunnett*. However, whilst 'whatsoever' adds an extra element of force to the text, its absence does not, to my mind, change the fact that condition No 3 acts to prohibit all other uses apart from Class B1(a).
17. Condition No 3 also differs from *Dunnett* in that it does not contain the words, '... without express planning consent from the Local Planning Authority first being obtained...'. This text provides clarity as to the mechanism that would need to be employed for the building to change to a use which is prohibited by that same condition considered in *Dunnett*.
18. I recognise that the court in *Dunnett*, on the facts of that particular case, found that this particular part of the condition before the court made it more abundantly clear that automatic or direct GPDO rights were excluded, by

² *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2019] UKSC 33

³ *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2017] EWCA Civ 192

requiring a planning application if such uses were to be pursued. Nevertheless, in my view the text, 'The premises shall be used only for Class B1(a) and for no other purpose...', found in condition No 3 is sufficiently clear and unambiguous to prohibit all other changes of use in the GPDO via Article 3(4), even without that additional text found in the condition considered in *Dunnett*.

19. The main parties have also referred to *Dunoon*⁴ but given that the conditions considered by the court in *Dunoon* were different to condition No 3 in a number of respects, *Dunoon* is of little assistance in interpreting the proper meaning of condition No 3, save for the court pronouncing the memorable principle that a grant of planning permission for a stated use cannot be sufficient to exclude the operation of the GPDO without 'something more'.
20. As my reasoning above makes clear, although condition No 3 does not specifically name the GPDO, I consider that the, '... and for no other purpose...' text found in condition No 3 provides 'something more' in that it goes beyond merely stating the use of the building and emphatically and unequivocally prohibits all other uses apart from Class B1(a). It is also important to note that Article 3(4) does not prescribe that a certain form of words is used, nor does it require that the GPDO is specifically mentioned in a condition that falls within the ambit of Article 3(4).
21. The 1989 permission gives the reasons for imposing condition No 3 as, 'The servicing arrangements are not considered adequate for unlimited use and the Local Planning Authority requires to be satisfied that that [sic] other use could be undertaken without obstruction or hazard on the Highway'. Read in the context of condition No 3 and the permission as a whole, the words 'unlimited use' and 'other use' lend support to my finding that condition No 3 is expansive in its effect, in prohibiting all other non-Class B1(a) uses.
22. Moreover, although no detail is given in the 1989 permission as to why the servicing arrangements might not be adequate for other uses, it is clear that this is a fact-specific circumstance relating to this particular building, meaning that it is perfectly reasonable to conclude that the servicing arrangements to be constructed under the 1989 permission for an office building might not be appropriate for other, potentially quite different, uses.
23. I have carefully considered the Oxford appeal⁵ cited, and I note the case law referred to relating to consistency of decision-making⁶. However, as the condition considered in that appeal did not contain the text 'and for no other purpose' that appeal is not sufficiently comparable with the appeal before me. Accordingly, it does not alter my analysis, given above.
24. I have also considered the Barnet appeal⁷ referred to, which did have the 'and for no other purpose' text in the condition under consideration in that appeal. Although the condition considered the Barnet appeal is similar to condition No 3, the reason given in the permission for that condition was to, '... enable the local authority to exercise control of the type of use *within this category* in order to safeguard the amenities of the area.' (emphasis added). This constitutes a fundamental difference with condition No 3, in that the reason for

⁴ *Dunoon Developments Ltd v SSE & Poole BC* (1993) 65 P&CR 101

⁵ APP/Q3115/W/18/3204899

⁶ *R (Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245; *Butterworth v SSCLG and City of Westminster Council* [2015] EWHC 108 (Admin)

⁷ APP/N5090/W/18/3197410

condition No 3 does not refer to the control of uses within Class B1 but rather to servicing arrangements and highway safety matters.

25. The appellant contends that the reference to 'servicing arrangements' is a reference to the effects of other development within Use Class B1. However, as the reason for condition No 3 states that the servicing arrangements are not considered adequate for 'unlimited use' I consider that this is wider than merely Class B1 alone. Furthermore, the reason for condition No 3 refers to highway safety issues which potentially could be a consideration for any number of non-Class B1 uses. As such, neither the Barnet appeal nor the reasons for condition No 3 dissuade me from the view that condition No 3 relates to all other non-Class B1(a) uses, including Class B1(b) & (c) and those outside of Class B1.
26. I note that Class O did not exist in 1989. However, this is immaterial, as Article 3(4) still applies even if new permitted development rights are created through amendments to the GPDO. Furthermore, whilst the Council's intention cannot have been to prevent a change to Class O specifically, because Class O was not yet then in existence, or to dwellinghouses specifically, my interpretation of condition No 3, given above, is that condition No 3 is wider than this in that it excludes all other non-Class B1(a) uses.
27. Similarly, although I note that a residential use would have different servicing and highway safety implications from the present office use, the prior approval requirements are not to be considered at this stage (which include transport and highways impacts), which is solely concerned with the effect of Article 3(4) in relation to the proper interpretation of condition No 3.
28. Reference has been made to the Planning Practice Guidance and Circular 11/95. Whilst these documents are useful for drafting conditions for future planning permissions, as condition No 3 is already in place and reasons for that condition are given within the 1989 permission those documents do not change my findings above. Similarly, whilst the appellant has referred to Parliament's intention for Class O in relation to boosting the supply of housing, Article 3(4) continues to have effect.
29. Reference has also been made to a grant of prior approval under Class O at Quest House, 125-135 Staines Road, but as it has not been made clear whether the original planning permission for Quest House contained a condition similar to condition No 3, it is not possible to make a meaningful comparison with the appeal proposal. Accordingly, that example does not change my findings.
30. I therefore find that the proposed development would be contrary to condition No 3 of planning permission reference 1054/115-123/P23, by virtue of Article 3(4) of the GPDO. Thus, the proposed development would not be permitted development under Schedule 2, Part 3, Class O of the GPDO.

Other Matters

31. As I have found on the main issue that the proposal would not be permitted development it is not necessary to make any determination on the prior approval matters found under Class O.

Conclusion

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

Alexander O'Doherty

INSPECTOR