



Appeal Decision

Hearing held on 23 November 2022

Site visit made on 23 November 2022

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 December 2022

Appeal Ref: APP/F2415/C/22/3292748

Unit 1, Rolleston Lodge Business Centre, Harborough Road, Rolleston, Leicestershire, LE7 9EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Northern Cobbler Retail Limited against an enforcement notice issued by Harborough District Council.
 - The enforcement notice, numbered EN650, was issued on 14 January 2022.
 - The breach of planning control as alleged in the notice is failure to comply with condition 3 imposed on a planning permission ref 16/01478/FUL granted on 2 February 2017.
 - The development to which the permission relates is: "On the 2nd February 2017 planning permission, subject to planning conditions, was granted by the Council under reference number 16/01478/FUL, for the 'demolition of agricultural barn; conversion and alteration of brick stable block to form six light industrial workshops (B1) with associated landscaping and hardstanding, Rolleston Barns, Harborough Road, Billesdon, Leicestershire. Condition 3 of 16/01478/FUL, sought to ensure that: The use of the premises shall be restricted to the B1c (Light Industrial) use applied for. REASON: A more intensive use of the premises would be inappropriate and create dangers due to increased traffic levels. It appears to the Council that Condition 3 of 16/01478/FUL is not being complied with as Unit 1 is being used as a café. Whilst the amended Use Classes Order 1987 (UCO) provides a flexible change under Class E, as set out in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, the proviso to this flexible change is not applicable where a 'condition' prevents operation of the amended UCO preventing that change. Planning Condition 3 of the 16/01478/FUL therefore prevents this permitted flexible change. The condition in question is no 3 which states that: The use of the premises shall be restricted to the B1 use applied for."
 - The requirements of the notice are to: a) Cease the use of Unit 1 as a café, and for anything other than the approved B1c use. B) Remove from Unit 1 all fixtures and fitting associated with the unauthorised use. For the avoidance of doubt this includes but is not limited to all internal and external shop fittings relating to retail use for example, furniture, catering facilities and fascia signage.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.]
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Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the entirety of section 3 (other than the heading) and insertion of the words "The change of use of Unit 1 not in accordance with Condition 3 of permission 16/01478/FUL which provides: 'The use of the premises shall be restricted to the B1c use applied for.'"

2. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Application for costs

3. The appellant made an application for their costs against the Council which is the subject of a separate decision.

The Notice

4. The description of the matters which appear to constitute a breach of planning control in the notice is fairly long and could be simplified by being corrected to:

"The change of use of Unit 1 not in accordance with Condition 3 of permission 16/01478/FUL which provides: 'The use of the premises shall be restricted to the B1c use applied for.'"
5. This change was discussed with the parties during the hearing and I am satisfied that it can be done without causing injustice. This correction should therefore be made.

Ground (c)

6. An appeal on this ground is on the basis that the matters stated in the notice do not constitute a breach of planning control. The main issue in this ground is whether Condition 3 on the 2016 Permission prevents the use of Unit 1 as a café. The Council's case is that the wording limits the use of the unit to the B1c use (which at the time when the condition was imposed was light industrial) and nothing else, without first seeking express permission. It is important to note that the words 'light industrial' do not feature in Condition 3 which in fact only refers to the B1c use
7. The parties agree that as the Town and Country Planning (Use Classes) Order 1987 ('the UCO') has been amended since the grant of the 2016 Permission there is no longer a use class B1(c), and that both business and café uses now fall within Class E (Commercial, business and service).
8. The appellant's argument that as Class B1(c) no longer exists the condition cannot be interpreted by reference to it, and that it must be interpreted to encompass Class E, and all of its constituent uses. As Class E includes both light industrial use and café use, the change between these uses is therefore not to be taken to involve development of the land pursuant to Article 3(1) of the UCO, and there has been no breach of planning control.
9. The Council's case is that the wording of Condition 3 is clear, concise and unambiguous in that it restricts the use of Unit 1 to light industrial only which is easily ascertained by reference back to the old use class B1(c). The Council does not dispute that this use now falls within Class E but argues that the previous B1(c) is equivalent to Class E(g)(iii), and that the use is therefore restricted to that particular use within Class E.
10. Even accepting the Council's argument that the equivalent use class to be inserted when interpreting Condition 3 is the narrower Class E(g)(iii), the wording of the condition does not prevent the operation of Article 3(1) of the UCO (which provides that use of a building for any other purpose within the same use class will not be taken to involve development). Whilst some of the caselaw concerns the removal of permitted development rights under the

General Permitted Development Order ('the GPDO') rather than the UCO, the same principles apply. When considering whether a condition excludes the operation of the GPDO or UCO the planning permission must be read as a whole and each case will turn on its own facts.

11. Applying the principles set out in the Dunnett¹ case, Condition 3 sets out the scope of the permission, in this case the light industrial use. However, it does not go on to clearly and specifically exclude the operation of Article 3(1) of the UCO. Condition 3 is worded similarly to the condition in the Dunoon Developments case ² where it was found that the words 'limited to' a particular use did not exclude permitted development rights. The words used in this case. i.e. the use shall be 'restricted to' are synonymous with 'limited to', and in the absence of an additional more emphatic phrase such as 'only' or 'for no other purpose' are not sufficient to exclude the operation of Article 3(1).
12. The wording of Condition 3 is therefore not sufficient to restrict the use to the previous use class B1(c), or to prevent movement within the new Use Class E as permitted by Article 3(1). This interpretation of Condition 3 is further supported when considering the 2016 Permission as a whole. Condition 7 does explicitly removes some permitted development rights, and this is in marked contrast to Condition 3 which does not specifically purport to prevent the operation of Article 3(1).
13. The Council referred to Appeal Decisions APP/F2415/C/22/3293787 & 3291554. The condition in that case stated that 'the premises shall be used as a fitness centre and for no other purpose', and went on to specifically refer to the relevant class in the UCO. The structure and effect of that condition is therefore very different to Condition 3 in this appeal and of limited relevance.
14. For the reasons as set out above, the appeal succeeds on this ground.

Conclusion

15. The enforcement notice will be corrected and quashed. In these circumstances the appeals on grounds (a), (f) and (g), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Zoë Franks

INSPECTOR

¹ Dunnett Investments Limited v SSCLG & East Dorset DC [2017] EWHC 534 (Civ)

² Dunoon Developments Limited v SSE & Poole BC [1992] JPL 936

APPEARANCES

FOR THE APPELLANT:

Killian Garvey of Counsel
David Hutchinson, Pegasus Group
Katie Stock, Pegasus Group
Lauren Davies, Pegasus Group
Feroza Bham, Northern Cobbler Retail Limited
Steffan Safhill, Northern Cobbler Retail Limited

FOR THE LOCAL PLANNING AUTHORITY:

Christine Zacharia, MRTPI, Planning Enforcement Team Leader
Michaela Barton, Planning Enforcement Officer
David Hunt, Senior Transport Planner, Leicestershire County Council

DOCUMENTS

Attendance List
Statement of Common Ground
Appeal Decisions APP/F2415/C/22/3293787 & 3291554