



Appeal Decision

Site visit made on 4 January 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/J1860/W/22/3305747

Parkhorn Farm, Uppey Sapey, Herefordshire HR7 4PX

- 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), Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Trustees of the A F Evans Children's Settlement Trust against the decision of Malvern Hills District Council.
 - The application Ref M/22/00062/GPDQ, dated 7 December 2021, was refused by notice dated 30 March 2022.
 - The development proposed is Change of use of 2 no. agricultural buildings to 5 no. Dwellinghouses (Use Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the various spellings of the site address as Park Horne, Parkhorn Farm and Parkhorn from the application form, decision notice, appeal form and location plan, and whether in Upper Sapey or Tedstone Warfe, the address above is taken from the application form.

Procedural Matters

3. It is clear from the submitted evidence that the proposal falls to be determined under Class Q(b) of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter the 'GPDO'). This permits a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, together with building operations reasonably necessary to convert the building to a dwellinghouse.
4. Paragraph W sets out the procedure for Part 3 prior approval applications. W(11) sets out that development must not begin before the occurrence of a number of events, one of which is the expiry of 56 days following the date on which the application was received by the Local Planning Authority without the authority notifying the applicant as to whether prior approval is given or refused.
5. In its appeal statement, the Council now accepts it determined the application after the 56 days expired. The appellant considers that the development can therefore now commence. However, the Council contends that the proposed development cannot begin lawfully because it has since found that a restrictive

- condition was imposed on Barn B back in 1997, when the barn was granted planning permission¹ for the 'Replacement of two buildings by one new building' at Parkhorn, High Lane, Tedstone Wafre, Bromyard, Herefordshire.
6. Article 3(4) of the GPDO states that 'Nothing in this Order [the GPDO] permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act² otherwise than by this Order.' In other words, if there is an existing condition restricting the existing land or buildings in some way, as in this case, then the development being considered under the GPDO cannot be permitted.
 7. Condition 5 was imposed on the above planning permission and states *'The building hereby permitted shall be used solely for the storage of materials and equipment used in connection with 'Parkhorn' only and for no other purpose'*. The reason for imposing the condition is because 'The Local Planning Authority wish to control the specific use of the building in the interests of local amenity'.
 8. The appellant contends that Condition 5 imposed on the building (Barn B) does not remove permitted development rights from the building as the condition does not expressly say so. Both parties have drawn my attention to a number of appeal decisions and caselaw relating to the wording of conditions and the expiration of the 56-day determination period to support their respective arguments.
 9. In *Carpet Décor*³ the High Court found that a planning condition excluding permitted development rights would have to be in 'unequivocal terms' in order to implicitly restrict such rights.
 10. *Dunoon Developments*⁴, in discussing a condition that sought to *limit* [my emphasis] activities within a building, found that a condition can only exclude the operation of the GPDO by express reference to it and not by implication, but that careful reading of the condition in question is still necessary.
 11. In the case of *Trump International*⁵ years later the judge found that the interpretation of words in a condition, being a public document, is an objective exercise that will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. In other words, whether a reasonable reader would understand what the words mean when reading the condition in the context of the other conditions and the consent as a whole.
 12. *Dunnett Investments*⁶ was considering a prior approval application to change a building from a Class B1 (business) use to a dwellinghouse. The building had previously been granted planning permission to be a B1 use with a condition that stated the use could only be for a Class B1 use falling within the Use Classes order "and for no other purposes whatsoever without express planning consent from the Local Planning Authority first being obtained". The court found that the condition was clear and excluded the grant of planning

¹ LPA application ref: 97/1456 granted 23 December 1997

² The Town and Country Planning Act 1990

³ *Carpet Décor (Guildford) Limited v SSE and Another* [1981]

⁴ *Dunoon Developments v SSE and Poole Borough Council* [1993]

⁵ *Trump International Golf Club Scotland Limited and another (Appellants) v The Scottish Ministers (Respondents)* (Scotland) [2015] UKSC 74, [2016] 1 W.L.R.85

⁶ *Dunnett Investments Ltd v SSCLG* [2017] EWCA Civ 192

permission by the GPDO because of the phrase “express consent of the Local Planning Authority”. It also found that the second part of the condition, ‘for no other purpose’, on its own was sufficient to mean the operation of the GPDO and hence permitted development was prevented, otherwise what purpose would the wording have served.

13. *Dunnett* also went on to set out the legal principles on conditions, following *Trump*, and listed a number of points that include that planning conditions need to be construed in the context of the planning permission as a whole; that conditions should be construed in a common-sense way; a condition should be clearly and expressly imposed, and a condition is to be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood.
14. Condition 5 before me makes no reference to “express consent” nor does it explicitly mention the GPDO, nor does it have a tailpiece to say “unless otherwise agreed with the Local Planning Authority.” Nonetheless, the condition is not without meaning.
15. The planning permission as a whole is for the erection of a building to replace two others, which is clearly described and ascertained from the description of the development without recourse to other documents. The condition is clearly intended to limit the scope of the permission by identifying acceptable uses for the building, and in turn excluding others. The words ‘for no other purpose’ emphatically prevent some other use which might otherwise be permissible without planning permission.
16. Condition 5 is straightforward in its wording. A reasonable reader would understand the overall purpose of the planning permission and the meaning of Condition 5 that simply states what uses are allowed. ‘For no other purpose’ makes it very clear that other uses are not permitted, even without explicit reference to the GPDO and removal of permitted development rights.
17. I accept that when the barn was granted planning permission in 1997 the GPDO did not then include the Class Q prior approval provisions. As in *Dunnett*, the wording of the condition is clear that other uses are not permitted, even if legislation changes in a way not foreseen at the time.
18. Furthermore, the condition is construed in conjunction with the reason for it – the Council wishes to control its specific use in the interests of local amenity. The planning application plans show adjacent properties called The Lilacs and Wheeley Cottage. On my visit I saw these are residential properties, still named as such and still there.
19. Parkhorn is clearly the place and not a person – the application plan on Ordnance Survey base map clearly shows the building in question on land belonging to a property clearly labelled as Parkhorn, adjacent to a road clearly labelled as High Lane. In my mind there is no doubt to the place and building to which the application and condition refer. As I explain above, the current appeal displays variations in spellings of the site address. Indeed the map base of the location plan for both the current appeal and the 1997 planning permission both show the property as Parkhorn. On the location plan for the current appeal there is no mention of Parkhorn Farm. However, any differences in spelling of ‘Parkhorn’ has not caused issue as the appellant has understood

that Condition 5 applies to the building referred to as Barn B and the subject of the appeal before me.

20. I am satisfied that Condition 5 meets the statutory tests and was necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects.
21. Article 3(4) does not make any differentiation or stipulation about the nature or type of condition imposed by planning permission - it says "any" condition. For the reasons above I concur with the Council that Condition 5 is a condition to which Article 3(4) applies and which sufficiently restricts the use of Barn B such that a Class Q prior approval application cannot be determined on it and that it cannot benefit from permitted development, regardless of whether the 56-day determination period has expired or not.
22. In light of the above, there is no need for me to consider further the matter of whether the development is permitted development.

Conclusion

23. For the reasons above the appeal is dismissed.

K. Stephens
INSPECTOR