



Appeal Decision

Site visit made on 11 April 2023

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 May 2023

Appeal Ref: APP/P1133/W/22/3302758

Cross Park Farm, Whitestone EX4 2HN

- 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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO).
 - The appeal is made by Mr Darren Gorrett against the decision of Teignbridge District Council.
 - The application Ref 22/00694/NPA, dated 30 March 2022, was refused by notice dated 17 June 2022.
 - The development proposed is described as "prior approval under Class MA for change of use of office building to create 1no. new dwellinghouse (Use Class C3) Refer to Planning Statement. The proposal comprises the change of use an existing office building (Use Class E) to create 1no. one-bedroom dwellinghouse. No operational development is proposed within this prior approval application, only internal alterations necessary to convert the building (e.g., insertion of partition walls, installation of domestic provisions etc.). No external alterations are required in support of the conversion."
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses).
3. Paragraph MA.1 of Class MA sets out a number of requirements, including (b), that the building "fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval". Prior to 1st September 2020, the sub-paragraph identifies Classes A1, A2, A3, B1, D1(a), D1(b) and D2(e) as being applicable and that Class E applies on or after 1st September 2020. The Council's first reason for refusal relates to this issue. The Council considers that the development complies with the other requirements set out in this paragraph, and based on the evidence before me, I see no reason to disagree.
4. Further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2) including (d), the "impacts of noise from commercial premises on the intended occupiers of the development". Paragraph MA.2(2) (g) is concerned with areas the Council consider to be important for general industry. The Council's second reason for refusal relates to these issues although in respect of MA.2(2) (g) there is no clear evidence to indicate the proposal relates to an important site for general or heavy industry. The Council does not contest compliance with the other requirements of this paragraph, and based on the evidence before me, I see no reason to disagree.

5. Therefore, I consider the main issue in this case to be whether the proposal would be permitted development under Class MA, and if so, the impacts of noise on intended occupiers of the development.

Reasons

6. The appellant agrees that in accordance with the Belmont judgement¹ a mixed use does not fall within the Use Class Order and submits that an earlier planning permission (ref:78/02091/FUL) helps establish an office use. That permission allows the use of the proposal building to accommodate office, toilets and increased storage space. However, the condition attached to that decision unequivocally stated that *the use of the premises and site shall be only that of an agricultural engineering business within the Use Class IV of the Town and Country Planning (Use Classes) Order, 1972, and for no other purpose or use without the prior permission of the Local Planning Authority.*
7. Additionally, the submitted site history suggests the current permitted use of the proposal building has been established following an allowed appeal in 2005², where the Inspector noted that *there is force in the argument that this permission should be viewed as something of a new chapter.* When referring to previous permissions the Inspector also confirmed that *we are not concerned with the introduction of a new use.* Even if the earlier permission remained relevant, there is no clear evidence the office was not used for ancillary purposes. I am therefore satisfied that the permitted use of the proposal building and wider site within which it lies is for a mixed-use agricultural engineering business and contractor's premises and yard, and a civil engineering contracting business. As such, the proposal building does not fall within one or more of the classes specified in MA.1.(2).
8. The appellant's submission includes two letters from persons stating they worked at Cross Park Farm for periods between 1978 and 2014, and, to quote them, that the "office was used independently and it is my understanding that the office remains in that use". The latter part of these statements refers to a timeframe outside the period they worked at the site. Further, the words 'my understanding' appear to mean very little without me knowing the basis for that understanding. Therefore, in the absence of any substantive justification to support these statements, they are not sufficiently precise or unambiguous to allow me to be certain that the use of the proposal building had changed to a non-ancillary office use for the required period.
9. The appellant's evidence suggests that the office is used in connection with and in support of the D & F Super Cranes business and that it had been previously occupied for administrative services. In this respect, I have no substantive evidence in support of a separate use for either of the above uses of the building. Additionally, the different appearance of the building within the wider site is not necessarily indicative on its own of a use entirely separate from the associated and permitted mixed-use activities within the wider site. Furthermore, at my site visit I observed the appeal building to be very closely linked to other buildings on the site, sharing the same access and I consequently find it unlikely that it has been functionally separated as referred to in *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207.*
10. For the above reasons, the proposed change of use of office building to a dwelling is not permitted development under the above Order. In coming to this view, I have taken into account the other case law brought to my attention. As the proposal does not constitute permitted development, I have no need to consider the impacts of noise on intended occupiers of the development.

¹ Belmont Riding Centre v FSS & Barnet LBC [2003] EWHC 1895

² APP/P1133/A/04/1161363

Other Matters

11. The lawfulness or otherwise of the possible future use of the appeal building by a different company as an office is not a matter relevant to this appeal.

Conclusion

12. For the reasons given, the appeal is dismissed.

J Hills

INSPECTOR