



Appeal Decision

Site visit made on 11 April 2023

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/K1128/W/22/3312658

Agricultural Barn located on land adjacent to Pridhamsleigh Manor Farm House (x)275018 (y)67662

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mrs Diane Hamlyn-White against the decision of South Hams District Council.
 - The application Ref 3022/22/PDM, dated 23 August 2022, was refused by notice dated 13 October 2022.
 - The development proposed is described as "the proposed development is to convert the agricultural building on the site to three dwelling-houses with each having suitable window and door provisions as a result of the existing openings being able to be modified, with further openings to be formed".
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Decision

1. The appeal is dismissed.

Background

2. Planning permission was granted in 2005 (Ref:50/2450/04/F) for amendments to a previous application for the erection of a multi-purpose poultry building. Condition 3 of this permission states "*The development hereby permitted shall be used solely for the purposes of agriculture as defined under Section 366 of the Town and Country Planning Act 1990*". The reason the Council imposed this condition was as follows: - "*The Local Planning Authority considers the use of the new building for the purposes specified would be appropriate and would accord with Development Plan Policies ST5, CO1, SHDC3 and relevant Central Government guidance, but a proposal to use it for any other purposes would need to be the subject of a separate planning application to be considered on its own merits.*"
3. The Council refused the application for prior approval on the basis the proposed development would contravene the above-mentioned Condition 3. Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) states that "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order".

Main Issue

4. The main issue is whether the proposed development would be permitted development.

Reasons

5. In order to benefit from any planning permission granted by Article 3 of the GPDO 2015, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, condition 3 attached to planning permission 50/2450/04/F clearly restricts such development *solely* for the purposes of agriculture, which, using the natural and ordinary meaning of the word, is unequivocal and precise.
6. The appellant has referred to appeals at Dodbrook Barn and Barn at The Sett not being relevant to this case, as condition 3 of 50/2450/04/F does not include words such as “for no other purpose without the prior written consent of the Local Planning Authority” and “not to be used for any other purpose”. However, the reason for the condition clearly sets out the Council’s justification for it, identifying that a proposal to use it for any other purpose would need to be the subject of a separate planning application. This additional and unambiguous clarification of why the building was permitted provides ‘something more’ as referred to in the Dunnett Investments case¹. Consequently, the words in the condition and its reason clearly demonstrate an intention to remove any rights that may be exercised through the GPDO.
7. For the above reasons, the proposed conversion of the agricultural building to 3 dwellinghouses would be contrary to the condition imposed on planning permission 50/2450/04/F, and therefore contrary to Article 3(4) of the Order. As such, the proposal would not constitute permitted development.

Other Matters

8. The appellant refers to a decision where prior approval was granted for a building that was subject to a restrictive condition. Whilst there may be similarities between that permission and this appeal, I have nevertheless determined this case on its merits in light of the evidence before me.
9. I note the Council has not raised any concerns over the prior approval matters. However, given my conclusion that the proposed change of use would not be permitted development, there is no need for me to consider whether or not any conditions or limitations of Class Q, such as the setting of nearby listed buildings, noise or flood risks on the site prevent prior approval being given, as it would not alter the outcome of the appeal.

Conclusion

10. For the reasons given above, the appeal is dismissed.

J Hills

INSPECTOR

¹ Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] EWHC 534 (Admin); [2017] EWCA Civ 192