



Appeal Decision

Site visit made on 13 February 2024

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/N5090/W/23/3328242

218 Woodhouse Road, North Finchley, Barnet, London N12 0RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 appeal is made by Mr Yakov Pines of YZ Estates Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/2618/PNE.
 - The development proposed is change of use from retail (Class E) to 1no dwellinghouse (Class C3).
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Class MA of Part 3, Schedule 2 of the General Permitted Development Order (GPDO) permits the change of use of commercial, business and service uses falling within Class E to a use falling within Class C3 subject to a number of limitations. Article 3(4) of the GPDO specifies that nothing in the order 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.
3. The Council contend that a restrictive condition that was imposed on a previous planning permission at the appeal site, in relation to the change of use from a shop to a drop-in centre, prohibits the appeal scheme. The appellant disputes the Council's interpretation of the condition, indicating that it does not prevent lawful changes of use pursuant to the GPDO.
4. With this in mind, the main issue is whether or not the proposal would be permitted development, having regard to Article 3(4) of the GPDO.

Reasons

5. Condition 2 of planning permission ref F/03172/08 at the appeal site (the 2008 planning permission) provides that *'the premises shall be used for Class A2 (Professional Services) and no other purpose (including any other purpose in Class A2 of the Schedule of the Town and Country Planning (Use Classes) Order, 1987, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order, with or without modification'*. The reason given for the condition was *'to enable the Local Planning Authority*

to exercise control of the type of use within the category in order to safeguard the amenities of the area'.

6. It is not disputed that a condition on a previous planning permission can restrict the operation of the GPDO. Article 3(4) of the GPDO makes no stipulation about the nature or type of condition imposed by planning permission and simply refers to 'any' condition. It is clear from the relevant case law that my attention has been drawn to by both parties, that existing conditions which potentially invoke Article 3(4) should be assessed on their specific wording.
7. It was held in *Dunoon Developments*¹ that the contested condition limiting activities within a building did nothing more than define the extent of the planning permission. To exclude the application of a general development order, there must be something more.
8. In *Dunnett Investments*², a planning condition stated that a property could be used for 'no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained'. It confirmed that the permission and its conditions must be interpreted objectively as a whole and in doing so, the question is what a reasonable reader would understand the words to mean, reading the condition in the context of the other conditions and of the consent as a whole. This judgement also sets out that to "exclude the application of the GPDO, the words used in the relevant condition, taken in their full context, must clearly evince an intention on the part of the local planning authority to make such an exclusion."
9. Condition 2 seeks to restrict the use of the premises for Class A2 (Professional Services) and for no other purpose, including any other purpose in Class A2. The officer report for the 2008 planning permission concluded that the Class A2 use would not erode the vitality and viability of the neighbourhood parade of shops and in providing a service to the public was preferable to other uses. The appellant's submissions indicate that the reasons given for granting the 2008 permission on the decision notice set out that it would not harm vitality and viability and would not have a detrimental impact on amenity.
10. I accept that the reason for imposing the condition refers only to exercising control within the use class category, to protect the amenities of the area. However, reading the condition in the context of the overall purpose of the consent, it is straightforward in its wording and makes it clear that its main purpose was to restrict the type of development at the site to Class A2 (Professional Services) to address concerns about the effect of other uses on the site. In doing so the condition contains something more than simply reiterating the development granted planning permission.
11. The appellant submits that the condition only removes rights within The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Condition 2 makes no reference to express consent, does not explicitly mention the GPDO, nor does it have a tailpiece to say unless otherwise agreed with the Local Planning Authority. Nonetheless, the natural and ordinary meaning of the words is that the condition clearly intended to control the scope of the permission by identifying an acceptable use for the property, and in turn

¹ *Dunoon Developments Ltd v SSE & Poole BC* (1993) 65 P&CR 101

² *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2017] EWCA Civ 192

excluding others. The words 'for no other purpose' emphatically prevent some other use which might otherwise be permissible without planning permission, even though it only specifically refers to the UCO.

12. While the Council could not have foreseen the revisions to the GPDO concerning changes of use from professional services (now Class MA) to residential, in my judgment, the wording of the condition taken in its full context demonstrates an intention on the part of the Council to exclude all uses at the site other than Class A2 (Professional Services). As such, Condition 2 is sufficient to clearly evince an intent to restrict the GPDO and as a consequence, the appeal proposal would contravene Article 3(4) of the GDPO. It therefore follows that the application of the GPDO is excluded and the appeal site cannot benefit from permitted development, under the terms set out in Class MA.
13. My attention has been drawn to the Planning Practice Guidance which is useful for drafting conditions for future planning permissions. However, as Condition 2 is already in place this guidance does not alter my findings above. Moreover, the merits of the condition are outside the scope of this appeal which relates to the GPDO and the prior approval process.
14. For the reasons given, the proposal would not be permitted development, having regard to Article 3(4) of the GPDO. As it would not be permitted development, it is not necessary for me to consider the prior approval matters under Schedule 2, Part 3, Class MA.

Conclusion

15. For the above reasons, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR