



Appeal Decision

Site visit made on 9 April 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Appeal Ref: APP/D0121/W/23/3328409

Unit A, Estune Business Park, Wild Country Lane, Long Ashton BS41 9FH

- 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 Flower & Hayes Developments Ltd against the decision of North Somerset Council.
 - The application Ref is 23/P/0945/CM2A.
 - The development proposed is change of use of second floor offices (Class E) to residential use (Class C3), creating 6 No new flats.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of second floor offices (Class E) to residential use (Class C3), creating 6 No new flats at Unit A, Estune Business Park, Wild Country Lane, Long Ashton, BS41 9FH in accordance with the application 23/P/0945/CM2A and the plans submitted with it.

Preliminary Matters

2. A revised National Planning Policy Framework was published on 19 December and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework.

Background & Main Issue

3. 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 GPDO) provides a permitted development right for the change of use of a building falling within Use Class E (Commercial, Business and Service) to Use Class C3 (Dwellinghouses). This is subject to limitations and conditions, as set out in subsequent paragraphs of Class MA.
4. The appeal site comprises the second floor offices of an office building that was vacant at the time of my site visit. The Council refused prior approval on 2 August 2023¹. The reason given by the Council is that condition 10 of planning

¹ North Somerset Council application reference 23/P0945/CM2A

application reference 02/P/1036/O restricts the use of the building to the former Use Class B1 and the proposal is therefore not permitted development.

5. Paragraph MA.2.(2) of the GPDO requires that: Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to transport impacts, contamination risks, flooding risks, fire risk, noise impacts, provision of natural light and impacts on intended occupiers of the development. The Council has no concerns in respect of these matters, and I have no evidence to justify reaching a different conclusion.
6. Bearing this background in mind, the main issue in this appeal is whether the proposed development is permitted development under Schedule 2, Part 3, Class MA of the GPDO having particular regard to Condition 10 of planning permission reference 02/P/1036/O.

Reasons

7. Outline planning permission was granted by the Council on 29 September 2003 for a mixed development and redevelopment comprising commercial and residential development². The Council approved reserved matters on 2 August 2005 for the erection of three commercial office blocks (B1 Use)³. The three blocks are known as Unit A, Unit B and Unit C. The appeal relates to the second floor of Unit A.
8. The outline planning permission had 18 planning conditions attached to it. Condition 10 of that permission is the relevant condition in respect of the appeal. The condition states that '*the employment uses on the employment land permitted by this development shall be only for uses falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987*'. The reason given for attaching the condition was to protect the amenities of future and existing residents.
9. Class B1 related to business uses and included use as an office other than a use within Class A2. It was subsequently replaced by the new Class E after the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. The use of the appeal building would therefore now fall into Class E(g), which includes an office to carry out any operational or administrative functions, the research and development of products or processes, or any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
10. The Council contend that the presence of condition 10 means that the proposal is not permitted development when having regard to Article 3(4) of the GPDO. This 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*'.
11. My attention has been drawn by the Council to a dismissed appeal at Parkhorn Farm, Upper Sapey⁴, which related to a Class Q prior approval application for the change of use of agricultural barns to dwellings. I understand that that

² North Somerset Council application reference 02/P/1036/O

³ North Somerset Council application reference 05/P/1033/RM

⁴ Appeal reference APP/J1860/W/22/3305747

appeal decision was issued after prior approval was granted for the conversion of Unit A to 18 flats⁵ and for the conversion of Unit C on the business park to 24 residential units⁶. The Council confirms that this is the reason for approving those schemes and refusing the scheme that is the subject of the appeal.

12. Paragraph 6 of the Parkhorn Farm appeal decision set out that the provision of Article 3(4) means that if there is an existing condition restricting the use of building or land, then the development being considered under the GPDO cannot be permitted.
13. The Inspector referred to court decisions that they considered relevant to the matter in hand. The two most recent of those court decisions were *Trump International*⁷ and *Dunnett Investments*⁸ and these are of relevance to this appeal too.
14. It was found in *Trump International* that the condition in question could be enforced because its meaning was sufficiently clear in the context of the whole planning permission and cross-referring to a number of the consent's other planning conditions. Additionally, it was surmised that the interpretation of a planning condition should be based on what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the consent as a whole.
15. The *Dunnett Investments* judgement set out a number of legal principles on planning conditions, having regard to the *Trump International* judgement. The principles included that planning conditions should be construed in the context of the planning permission as a whole; conditions should be clearly and expressly imposed and construed in a common sense way; a condition should be construed objectively and not by what the parties intended at the time, but by what a reasonable reader construing the condition in the context of the planning permission as a whole would understand; and a condition should be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood.
16. In response, the appellant has referred me to an allowed appeal at Elms Lodge Barns, Barrow on Soar⁹. At paragraph 11 of that appeal decision sets out that case law generally establishes that to invoke Article 3(4) the condition must do more than specify the development being approved and contain a more explicit or implicit restriction on future development.
17. Although the Elm Lodge Barns appeal decision predates *Dunnett Investments*, it is of relevance to the appeal before me as it has similar wording to condition 10. Particularly as it includes the word 'only' and the Council assert that the inclusion of this word means that condition 10 prevents the exercising of the permitted development rights conferred by Schedule 2, Part 3, Class MA of the GPDO. In the interests of clarity, the condition considered by the Inspector in the Elm Lodge Barns appeal states '*the premises shall be used only for purposes falling within Class B1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (UCO)*'.

⁵ North Somerset Council application reference 20/P/1665/COA

⁶ North Somerset Council application reference 20/P/2574/COA

⁷ *Trump International Golf Club Scotland Ltd and another v The Scottish Ministers (Scotland)* [2015] UKSC 74; [2016] 1 WLR 85

⁸ *Dunnett Investments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 192

⁹ Appeal reference APP/X2410/W/16/3146443

18. Having regard to the appeal decisions provided by both parties and the case law on this particular matter, the exclusion of the provisions of the GPDO does not need to be specifically referred to in the condition. However, in order for the GPDO provisions to be excluded by a condition, the objective of the condition and the permission as a whole must be interpreted as a clear intention by the Council to exclude the provisions of the GPDO.
19. Condition 10 does not include explicit mention of the GPDO, it does not require express consent to be sought for alternative uses, nor does it include a tailpiece stating 'for no other purpose' or words to similar effect.
20. The wording of the condition refers only to restricting the employment uses on the employment land to uses falling within Class B1 (now Class E(g)). It does not specifically prevent other uses of the land other than those that would constitute employment uses. Furthermore, the reason given for the condition confirms that it was attached to ensure that other potential employment uses fall within Class B1 so as to prevent any employment use taking place that would cause detriment to the amenity of residential properties.
21. The condition does not clearly or expressly seek to prevent a future use of the employment land for residential purposes. My interpretation is that the condition is narrow in its restriction and only seeks to restrict alternative employment uses of the employment land in order to protect nearby residential properties from those other uses. As such, the condition does not restrict the application of the GPDO permitted development rights for the re-use of existing employment sites for housing.
22. For the above reasons, Article 3(4) of the GPDO is not engaged and condition 10 of outline planning permission reference 02/P/1036/O does not prevent the change of use of the second floor of the appeal building from Class B1 (now Class E(g)) to Class C3 being carried out as permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Conclusion

23. For the reasons given above, the proposed development is permitted development under Schedule 2, Part 3, Class MA of the GDPO having particular regard to Condition 10 of planning permission reference 02/P/1036/O. The appeal is therefore allowed.

K Reeves

INSPECTOR