
Appeal Decision

Site visit made on 18 August 2015

by L Gibbons BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 October 2015

Appeal Ref: APP/L3815/W/15/3022038

The Mill, Ham Farm, Main Road, Bosham, Chichester, West Sussex PO18 8EH

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr David Langmead against the decision of Chichester District Council.
 - The application Ref BO/14/03168/COUPJ, dated 11 September 2014, was refused by notice dated 21 November 2014.
 - The development proposed is the change of use from B1(a) office to C3 residential.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the Council's decision, the Town and Country (General Permitted Development) Order 2013 (as amended) was superseded by the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO), which came into effect in April 2015. In terms of the section which is relevant to this appeal, Class O has replaced the old Class J. However, in respect of the issues relating to this case the content of the GPDO is not materially different.

Background and Main Issue

3. The proposal seeks to make use of permitted development rights which provide for a change of use falling within Class C3 (dwellinghouses) of the Schedule of the Use Classes Order (UCO) from Class B1(a) offices. The provisions of the GPDO at paragraph O.2 set out that there are three matters on which prior approval may be required; these are transport and highways, contamination risk and flooding. The Council have indicated that these do not apply in this case.
4. However, the Council has refused the application on the basis that condition 4 attached to the original planning permission¹ removes permitted development rights rendering the prior approval regime not applicable in this case. This argument is made in the light of Article 3(4) of the GPDO which states that '*nothing in this order permits development contrary to any condition imposed*

¹ BO/99/01463/FUL dated 13 August 1999

by any planning permission granted or deemed to be granted under Part III of the Act otherwise by this order’.

5. Condition 4 reads *‘The premises shall be used only for the purposes within Use Class B1 as defined in the Town and Country Planning (Use Classes) Order 1987. The reason for the condition is given as ‘to comply with the terms of the application and protect the amenities and character of the area’.*
6. The planning history of the appeal site includes an appeal in 2014² for the change of use from offices to residential which was dismissed. Taking the above into account the main issue is whether condition 4 of the original planning permission is effective in removing the permitted development rights under Schedule 2, Part 3, Class O of the GPDO.

Reasons

7. The appellant refers to the Planning Practice Guidance which indicates that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The appellant argues that there are appeal decisions and High Court judgements that indicate condition 4 does not withdraw permitted development rights. I have been referred to the ‘Dunoon’ Court of Appeal case³ which relates to the operation of the Use Classes Order. However, it is not clear what the context of this judgement was or what matters were considered.
8. The Council refer to the findings of the ‘Royal London Mutual’ judgement⁴. This relates to a case involving a condition limiting the types of goods to be sold from a retail park. The judgement refers to the use of the word ‘only’ in the condition as making it clear that uses apart from retail trade are excluded. I note the appellant considers that judgement to be incomplete and flawed. However, the reasons for this are not explained. Based on the evidence before me, I consider there are clear parallels between the Royal London Mutual judgement and the case before me.
9. The Council has provided appeal decisions⁵ for change of use from offices to dwellings at Tangmere within the District. In these cases there was a similar condition attached to B1 uses although the reason for the condition is worded slightly differently. The Inspector concluded that the condition was effective in removing permitted development rights.
10. The appellant refers to an appeal decision in Chiltern District⁶ relating to a condition which was also similarly worded to condition 4. I have been provided with an extract of that appeal. The extract states that as there is no reference to the operation of the GPDO in the condition its operation was not prevented.
11. The extract from the Chiltern appeal indicates that the Inspector took a different view from the Inspector in the Tangmere decisions and the previous Inspector for the appeal site. Consistency between decision makers is important. However, I have not been provided with a full copy of the decision

² APP/L3815/A/14/2217105

³ *Dunoon Developments Limited v Secretary of State for the Environment (1992) JPL 936*

⁴ *Royal London Mutual Insurance Company Limited v Secretary of State for Communities and Local Government (2013) EWHC 3597*

⁵ APP/L3815/A/14/2228511; APP/L3815/A/14/2229066; APP/L3815/A/14/2229169 (issued together)

⁶ APP/X0415/A/14/2228438

or the other considerations taken into account. Nor am I aware of the arguments that were put to that Inspector. Therefore the weight I give to it has to be tempered accordingly.

12. The Council accept that the wording of the condition is not in a form which they would use today. Nevertheless, by the use of the word 'only' this is clearly means 'solely' or 'exclusively'. This is supported by the preceding words 'shall be used'. On this basis, I consider that the wording is precisely defined and that there is a clear restriction against any other use.
13. I turn now to consider the reason for the condition. In this respect, the Council refer to the need to protect the intrinsic rural quality of the area. The location of the appeal site is slightly away from other residential properties with fields to the east and west. There are only small clusters of house to the south on Main Road. The Council submit that the presence of domestic paraphernalia would need to be controlled in this rural area and I agree that this would be the case. Both parties refer to the need to consider planning permission in its full context. Therefore, when the condition and the reason are read as a whole it is clearly effective in restricting the use of the building to Class B1.
14. The appellant refers to Flint Barn, which is close to the appeal site. This house was formerly in B1 use and I understand had a similar condition attached. However, I am not aware of the circumstances surrounding that case and therefore I am unable to give this weight in considering the matter before me.
15. I conclude that condition 4 of the original planning permission is effective in removing the permitted development rights under Schedule 2, Part 3, Class O of the GPDO. The proposal would be contrary to the GPDO under Article 3(4). The prior approval regime is therefore not available in this case and planning permission would be needed for the proposed change of use. For the above reasons I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR