
Appeal Decision

Site visit made on 26 July 2016

by **S D Harley BSc(Hons) MPhil MRTPI ARICS**

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

Decision date: 08 August 2016

Appeal Ref: APP/X1925/W/15/3132622

The Barn, Sootfield Green, Charlton Road, Preston, Herts SG4 7TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Jeremy Ward, JWIBC against the decision of North Hertfordshire District Council.
 - The application Ref 15/00005/1PN, dated 31 December 2014, was refused by notice dated 25 February 2015.
 - The development proposed is change of use of agricultural barn to one 2 bedroom dwelling and external alterations involving the insertion of windows and doors.
 - This decision supersedes that issued on 21 December 2015. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Jeremy Ward, JWIBC against Hertfordshire District Council. That application is the subject of a separate Decision.

Procedural Matters

3. The application to the Council was made under Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995, as amended. However, that statutory instrument has been revoked and replaced with the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Equivalent provisions are now included within Schedule 2, Part 3, Class Q of that Order and both parties have referred to the 2015 GPDO in their appeal submissions. The relevant legislation provides for anything done under the previous provisions to be treated as if carried out under the new provisions. Accordingly the considerations of this appeal, although relating to an application made under Class MB, has effect as if made under the new Class Q.
 4. On 5 March 2015 the Planning Practice Guidance (PPG) relating to prior approvals was amended. Amongst other things this gives guidance as to the matters that can be taken into account in considering prior approval cases and gives examples of cases where location and siting might be considered to be impracticable or undesirable.
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Background and Main Issues

5. Class Q of Part 3 of Schedule 2 to the GPDO categorises as 'permitted development' the change from use as an agricultural building to use falling within Class C3 (dwelling houses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) subject to limitations.
6. 'Permitted development' benefits from deemed planning permission under the provisions of Article 3 of the GPDO subject to certain limitations. For the purposes of this appeal the relevant limitations are at Article 3(4); Schedule 2 Part 3 Class Q and W. The proposal would not be permitted development unless all the conditions set out in the GPDO are satisfied.
7. Although protected species are not specifically referred to in the GPDO, regulation 9 of the Conservation of Habitats and Species Regulations 2010 would still apply. This states that the "*... competent authority must exercise their functions which are relevant to nature conservation.... so as to secure compliance with the requirements of the Directives*". Accordingly the Directives must be considered in making decisions relating to the GPDO. I am also mindful that Circular 06/2005 Biodiversity and Geological Conservation indicates that a survey should be carried out before permission is granted where there is a reasonable likelihood of a protected species being present and possibly affected. In the case of proposed works to a barn it is not unreasonable to suppose that bats or their habitats might be affected.
8. The appellant says the current proposal for The Barn is an amendment to address the reasons for refusal of an earlier application for prior approval on the site Ref 14/02259/1PN. That proposal was refused due to the effect on the rural character of the area and as being impractical and undesirable due to the unsustainability of the site location.
9. The Council refused the current proposal for three reasons. The first reason is that the proposal does not comply with Article 3(1) of the GPDO and the prior approval process would therefore not be available.
10. The second reason is that the change of use would be impractical or undesirable due to: the location of the building as future occupants would be heavily dependent on the private car and therefore the proposal would be environmentally and socially unsustainable; insufficient curtilage with a lack of waste storage; access; car parking and private amenity space; and localised flooding at or near the highway/access. Following the amendment to the PPG the Council has confirmed that, for the purposes of considering the prior approval notification, the reason in relation to the sustainability of the location does not apply but maintains its concerns in relation to the other matters.
11. The third reason relates to the any risk and impacts on protected species (bats).
12. On the basis of the above I consider the main issues to be:
 - whether or not the proposal is permitted development under the GPDO;
 - if that is the case, whether prior approval is required under the provisions of the GPDO; and, if so,

- whether prior approval should be granted taking particular account of waste storage, the adequacy of access arrangements, car parking, private amenity space, and the effect on protected species.

Reasons

Whether the proposal is permitted development

13. Article 3(4) of the GPDO states that "*Nothing in this Order permits development contrary to any condition imposed by any planning permission granted*" The building which is the subject of this appeal benefits from the planning decision Ref 10/02253/1 which granted permission for "*Erection of oak timber frame barn*" on 10 November 2010 subject to a number of conditions including Condition No 3 which restricts the use of the building.
14. The parties agree that it is a question of construction as to whether a condition excludes the operation of the GPDO or the UCO. There is a substantial body of case law¹ and there is no magic formula of words but a common theme is that to exclude the operation of the GPDO or the UCO a condition must go beyond specifying the development for which permission is granted and contain "something more" and should be construed benevolently and not narrowly².
15. Condition 3 and the Reason given for it need to be read together. Condition 3 states that "*The building, hereby granted permission shall not be used otherwise than for storage purposes and for the keeping of livestock associated with the agricultural use of the land comprising the application site*". The Reason given for the Condition is "*Planning permission is granted in this case solely on the basis that the building is required for purposes associated with the agricultural activity undertaken on the application site. The condition is imposed to ensure that the building continues to be so used and is not used for any other purpose which would be incompatible with its location or which would conflict with the provisions of Policy 6 of the North Hertfordshire District Local Plan No 2 with Alterations*". Condition 3 does not explicitly mention residential use or the operation of the GPDO but it explicitly states that the building shall not be used otherwise than for purposes associated with agricultural use on the site. In that respect it is not vague.
16. In my view a "reasonable reader" as in *Trump International Golf Club Scotland Limited v Scottish Ministers [2015] UKSC 74* would interpret the explicit statement in the Condition "*....shall not be used otherwise than...*" and the explicit wording in the Reason "*.....permission is granted solely on the basis that the building is required for purposes associated with agricultural activityto ensure that the building continues to be so used and is not used for any other purpose....*" (my emphasis) as amounting to a restriction on any other use of the building. Neither Condition 3, nor the accompanying Reason, refers to any particular decision maker or mechanism for any subsequent planning decisions. I consider it unlikely that any "reasonable reader" would interpret the wording of Condition 3 or its accompanying Reason to differentiate between the local planning authority and any other mechanism in respect of subsequent

¹ *Dunoon Developments Limited v The Secretary of State for the Environment & Poole Borough Council* (1993) 65 P. & C.R. 101; *Rugby Football Union v Secretary of State for Transport, Local Government and Regions* [2002] EWCA Civ 1169, *City of London Corporation v SSW[1971]* 23 P. & C.R., *Carpet Décor (Guildford) Ltd v SSE* [1981] and *Royal London Mutual Insurance Society Limited v SSCLG* [2013] EWHC 3597 and *Dunnett Investments Ltd v SSCLG and East Dorset District Council* [2016] EWHC 534 (Admin).

² *Carter Commercial Developments Ltd v Secretary of State for the Environment* [2002] EWHC 1200 (admin)

planning decisions or to distinguish between whether a planning application or a prior approval application might be required.

17. I have carefully considered a recent appeal decision drawn to my attention by the appellant Ref APP/X2410/W/16/3146443. That decision allowed prior approval for conversion from office use to residential use under Schedule 2, Part 3, Class O of the GPDO. In that case a colleague Inspector took the view that a planning condition attached to an earlier permission did not exclude the operation of the GPDO. However, the circumstances were significantly different in that case. There the Condition and the Reason together provided for the premises to be used “..only for purposes falling within Class B1...” for the reason “To ensure the use remains compatible with the nearby dwelling”. In my view such wording would not contain the “something more” which is found in Condition 3 of Ref 10/02253/1 and the associated Reason as I have already set out. Accordingly that recent appeal decision does not lead me to any different conclusion.
18. For the reasons set out above I conclude the proposal is not permitted development under the GPDO. On that basis I do not need to consider further whether prior approval is required, or should be granted, under the provisions of the GPDO.

Other Matters

19. The appellant considers that the denying of the opportunity to utilise an important property right would be in breach of Article 1 of the first Protocol of European Convention on Human Rights which would be procedurally unfair or irrational and would lead to a breach of Article 6. However, I have found that the permitted development rights are not available under the GPDO in this case and therefore I do not need to consider this matter further.
20. The appellant says that Condition 3 does not take account of the event that the building may not be required in connection with agricultural use in the future. However, even should the building not be so required, the fact that the prior approval process does not apply would not prevent the making of a planning application in respect of the site or building in the future which could then be considered in the usual way taking into account the development plan and other material planning considerations.

Conclusion

21. For the reasons set out above and taking into account all other relevant matters raised I conclude that the appeal should be dismissed.

SDHarley

INSPECTOR