The Planning Inspectorate

Appeal Decision

Site visit made on 5 August 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/B9506/W/19/3226308
Office Building, Hedge House, Hangersley Hill, Forest Corner, Hangersley, Ringwood BH24 3JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Mr & Mrs Peter & Kellie Quinn against the decision of New Forest National Park Authority.
- The application Ref 18/01012, dated 14 December 2018, was refused by notice dated 28 February 2019.
- The development proposed is change of use of office building (Use Class B1(a) to 1no. residential unit (Use Class C3).

Decision

1. The appeal is dismissed.

Procedural Matters

2. An application for costs was made by Mr & Mrs Peter & Kellie Quinn against New Forest National Park Authority. This application is the subject of a separate Decision.

3. I have edited the description of development in the banner heading above to remove text which describes the nature of the application.

Main Issue

4. Article 3(4) of the GPDO states: 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. The main issue in this case is whether a condition imposed by a previous planning permission, granted by the Inspector in appeal decision reference APP/B1740/C/04/1161066 (the previous planning permission), prevents the appellants from exercising the permitted development rights set out in Schedule 2, Part 3, Class O of the GPDO (Class O).

Reasons

5. Condition 1, listed within the previous planning permission states: the use hereby granted shall be used for offices and for no other purpose (including any other purpose in Class B1 or B8 of the Schedule to 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 any modification).

6. The parties have drawn attention to various case law; principally the judgements in Dunnett Investments Ltd v SSCLG [2017] EWCA Civ 192 (Dunnett) and Hulme v SSCLG [2011] EWCA Civ 638. In this regard, the key point of dispute between the parties is whether, when read in its full context, condition 1 of the previous planning permission can be considered to clearly evince an intention on the part of the Inspector who imposed it, to restrict all future changes of use.

7. As established by the courts, an exclusion of the GPDO can be express or implied. The condition makes no explicit reference to the then General Permitted Development Order 1995 (GPDO 1995). As accepted within the appellants' submitted legal opinion however, the bracketed text within the condition references changes of use which were at that time permissible within both Class B1 under the Use Classes Order 1987 (the UCO), and from Class B1 to B8 within the GDPO 1995. When written, the condition could not therefore have been properly understood unless with reference to the GDPO 1995.

8. In the above regards condition 1 differs from those considered in appeal APP/N5090/W/18/3197410, which has been brought to my attention by the appellants, and in Dunnett. Notwithstanding some similarities in wording, in both of these cases the conditions in question only referenced changes of use allowed by the UCO. Thus the conclusions with regard to the conditions in each of these cases are not directly transferable to the current case.

9. I note the view within the appellants' legal opinion that interpretation of the condition should not be extended beyond the GDPO 1995. Indeed, reference within the condition to revocation and re-enactment is with regard to the UCO, not the GPDO 1995. Nonetheless, the clear purpose of including this wording was to give enduring effect to references made to specific use classes within the condition. Therefore, and in exactly the same way as when the condition was originally imposed, it follows that current interpretation of the condition is only possible with regard to the UCO and GPDO as they exist at present.

10. The bracketed text within condition 1 is qualified by the term 'including'. In ordinary use the presence of this term indicates that the text which follows is not intended to constitute a comprehensive list. Read in the context of the preceding phrase 'shall be used for offices and for no other purpose', an intention to broadly restrict permitted changes of use beyond those applicable to changes between commercial uses, is therefore indicated. Indeed, there would have been no other logical reason for the Inspector to use bracketed text or the term 'including' if this was not his intention.

11. For the above reasons I also consider that the condition can be reasonably read as making provision for its application to changes of use that were not possible without need for planning permission at the time it was imposed. In my view therefore, both the construction of, and the language used within the condition evinces an intention to broadly restrict all future changes of use, which now includes that set out in Class O.

12. Read in the context of the decision, it is clear that a condition restricting changes of use was first suggested by the then Council. The format of the proposed condition, and the Council's reasons are not before me. In view of my reasons above however, it is apparent that the Council wished to restrict changes of use then allowed by both the UCO and GDPO 1995. The Inspector's stated reason for imposing the condition was to prevent development of other uses on the site that would not be compatible with adjoining residential properties. In effect, to safeguard the living conditions of adjacent residents by preventing changes of use which might be harmful, without planning permission.

13. The Inspector could not have reasonably anticipated the existence of Class O, and thus the need to consider or justify the restriction of permitted changes of use which did not then exist could not have formed part of his reasoning. The fact that the Inspector then applied a form of words within the condition that gave both broad, and enduring effect to the restriction it contained however provided scope to accommodate the future introduction of such rights, as outlined above. In my view this was intentional and wholly consistent with the Inspector's desire to safeguard the living conditions of adjacent residents. I am thus of the view that the decision further evinces an intention, borne out by the construction of and wording used within the condition, to restrict all future changes of use, now including that set out in Class O.

14. I accept that the proposed residential use would have effects which differed from commercial uses within Classes B1 and B8. Whether these would be more compatible with adjacent residential uses is however open to question. Furthermore a question that should, in the first instance, be considered in the context of an application for planning permission.

15. In view of my findings above there is no need for me to consider or to make a determination on the prior approval matters.

16. For the reasons outlined above I conclude that condition 1 on the previous planning permission prevents the appellants from exercising the permitted development rights set out in Class O. Therefore it is not permitted by the GPDO. It is development for which express planning permission is required, and that could only be granted on an application made to the local planning authority in the first instance.

Other Matters

17. The decision issued by the Authority did not directly address the need for, or grant/refuse prior approval. It was however clear from the decision that the Authority was of the view that the development fell outside the GPDO, and, for the reasons outlined above, I agree.

18. I accept that Class O was introduced to facilitate changes of use from offices to residential. This does not however alter the effect of Article 3(4) of the GPDO, reading the GPDO as a whole. In this regard dismissal of this appeal would not frustrate the Parliamentary intention behind Class O, as the intention was clearly not to allow Class O to operate independently.

19. The appellants have claimed that the Authority failed to issue its decision within the 56 day period specified within paragraph W of Part 3, schedule 2 of the

GPDO (paragraph W). However, this 56 day period only starts once all the required information is received by the local planning authority. In this case the Authority indicates that certain plans were missing when the application was submitted. As the provision of plans is a requirement of Paragraph W(2)(b), commencement of the 56 day period would have been delayed. Though I note that an email sent by the Authority states that the plans requested were a 'local requirement', I see no reason why they couldn't be considered to fall within the scope of Paragraph W(2)(b). Even if this was not the case however, this does not alter my finding that the development is not permitted by the GPDO.

20. The Authority states that the development would have a significant effect on the integrity of the New Forest Special Protection Area/Special Area of Conservation. Article 3(1) of the GPDO grants planning permission for the classes of development within Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017 that development which (a) is likely to have a significant effect on a European site alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77. The appellants have submitted a Unilateral Undertaking to pay the quoted mitigation fee. The Authority has indicated that the information required is incomplete. However, insofar as this is a matter which falls outside the scope of the prior approval process, I need not address it further.

Conclusion

21. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR