The Planning Inspectorate

Appeal Decision

Site visit made on 27 March 2015

by Helen Heward BSc Hons MRTPI

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

Decision date: 27 April 2015

Appeal Ref: APP/T0355/A/14/2226041
Barn, Bears Copse, Plough Lane, West End, Waltham St Lawrence, Berkshire, RG10 0NN

- 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, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr Phil Hall against the decision of the Royal Borough of Windsor and Maidenhead.
- The application Ref 14/01113, dated 7 April 2014, was refused by notice dated 2 June 2014.
- The development proposed is a change of use of agricultural building to B1.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant seeks prior approval for a change of use of an existing agricultural building to a use falling within Class B1 (business) of the Town and Country Planning (Use Classes) Order as Amended (the UCO). The Council refused the application because "*Permitted development rights under Class M are removed under Condition 1 of planning approval 11/00341/FULL"*.

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 came into effect on 15 April 2015 (the GPDO 2015). The provisions of Part 3, Class M of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) are provided in Class R of the GPDO 2015, but there is no change in the effect of the provisions so far as this appeal is concerned and I have determined the appeal with regard to the GPDO 2015.

4. Class R grants planning permission for the change of use of an agricultural building to a flexible use, which includes a use falling within Class B1 (business), subject to the prior approval of the local planning authority. However, Article 3(4) 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".*

Main Issue

5. The main issue is whether condition 1 of planning permission 11/00341/FULL excludes permitted development rights under the provisions of Part 3, Class R of the GPDO 2015.

Reasons

6. Condition 1 states that "*Notwithstanding the terms of the application, including the Design and Access Statement, the building hereby permitted shall be used for no other purposes than uses associated with agriculture*". The planning permission, for the erection of a barn, was granted on appeal under s78 of the Town and Country Planning Act 1990 (the Act) (APP/T0355/A/11/2160399). At the same time the Inspector considered an application deemed to have been made under s177(5) of the Act for development already carried out; namely the erection of a building (APP/T0355/C/11/2160483). The Inspector's considerations of the merits in paragraphs 19 to 37 of his decision letter are relevant to this appeal.

7. The Council had served separate enforcement notices alleging the unauthorised erection of a building and the unauthorised use for the storage and maintenance of historic racing cars and tractors and the unauthorised material change of use of the land to non-agricultural use by storage and maintenance of historic racing cars and tractors unconnected with the use of the land for agricultural purposes (APP/T0355/C/11/2160485). At the hearing the appellant submitted that the barn had been built for the purposes of agriculture, but accepted that the barn had been used for other non-agricultural purposes and that his intention had been that, from time to time and when space permitted it would be used partially for the storage of his racing cars. A design and access statement submitted with application 11/00341/FULL indicated an intention to occasionally store 2 classic cars in the barn.

8. In the decision letter the Inspector noted that new buildings for the purposes of agriculture are not inappropriate development in the Green Belt (paragraph 21), but that the construction of a new building for the purpose of storage of racing cars would be inappropriate (paragraph 22). He also reported that "*At the hearing the appellant acknowledged that it was a mistake to propose to store, or to actually store, the cars in the barn but stressed that the purpose of the barn had always been the secure storage of agricultural machinery and hay as 'haylage'…*" and that the appellant confirmed that "*he was prepared to accept a condition, on any grant of planning permission, restricting the use of the barn solely to purposes associated with agriculture"* (paragraph 23). The Inspector went on to note that if the use was so restricted by condition the barn would not be inappropriate development in the Green Belt (paragraph 24) and that "*For the removal of doubt it is also necessary to impose a condition restricting the use of the barn to uses associated with agriculture*" (paragraph 37). However, there is no express reference to the exclusion of the statutory provisions of a development order in condition 1.

9. Both parties cite legal judgements in support of their submissions as to whether or not condition 1 excludes the GPDO 2015 provisions in respect of change of use under Part 3, Class R. The appellant has drawn my attention to Carpet Décor (Guildford) Ltd v Secretary of State for the Environment and Guildford

Borough Council 1981 (JPL 806) (Carpet Décor) and Dunoon Developments Ltd v Secretary of State for the Environment and Poole Borough Council (Dunoon). The Council refers to Royal London Mutual Insurance Society Ltd v Secretary of State for Communities and Local Government (Royal London).

10. The Carpet Décor judgement indicates that to exclude such statutory provisions there needs to be 'express exclusion' of their effect or for it to be in 'unequivocal terms'. In that case the description of the development was in the terms '*as store for papers of National Provincial Bank Ltd. and as residence for caretaker in employ of said Bank, but for no other type of store or for any other person or corporation*'. The Judge held that as a general principle where a local planning authority intended to exclude the operation of the UCO or the General Development Order (GDO), they should say so by the imposition of a condition in unequivocal terms and, that in the absence of such a condition, it must be assumed that those Orders will have effect by operation of law. However, the Carpet Décor case was different from this appeal where there is a condition to be considered.

11. In Dunoon there was a specific condition limiting use. It read '*that the use of the proposed premises shall be limited to the display, sale and storage of new and used cars – together with an administrative centre and the preparation of vehicles including facilities for cleaning, polishing and for such essential auxiliaries as general routine inspection of engine, brakes, steering and lighting*.' The reason for the condition was '*to retain the amenities of the high class, predominantly residential area*'. The Court of Appeal Judge noted that the case turned on the interpretation of the word limited in its context. He concluded that the word limited was directed to the construction of the condition and not addressed to the question of whether the permission should be excluded from the operation of a general development order (GDO). The condition did not expressly exclude a GDO and the words themselves in their context did not imply exclusion. There had to be something more than a grant of planning permission for a particular use to exclude the application of a GDO.

12. In the case of the Royal London a condition stated that the retail consent "*shall be for non-food sales only in bulky trades normally found on retail parks which are furniture, carpets, DIY, electrical goods, car accessories, garden items and other such trades as the Council may permit in writing*". Although the case concerned changes within a particular use class, it is relevant to this appeal because Royal London Mutual Insurance Society Ltd argued that the condition did not exclude the operation of the UCO because in order to do so, the condition must impose a restriction in clear and unequivocal terms. The Judge held that the condition was a clear restriction on the sale of food and 'impliedly' excluded the exercise of the right under the UCO. Three factors led to this conclusion, firstly the use of the word 'shall' in the condition which did not admit any discretion, secondly the use of the word 'only' and thirdly the listing of the permitted trades with a requirement that other trades required the authority's consent.

13. The principle of the use of a building is usually set by the description of development and the grant of planning permission, and Section 75 (3) of the Act provides that if no purpose is specified, the permission shall be construed as including to use the building for the purpose for which it is designed. This building has the appearance of a barn designed for the purposes of agriculture.

However, in this case the phrase '*Notwithstanding the terms of the application, including the Design and Access Statement'* in condition 1 clarifies that the use of this building is not set by the description of development provided in the application documents only.

14. The Royal London decision indicates that it is not necessarily essential for the condition to expressly reference a GDO. Condition 1 includes the words '*shall be used for no other purposes than associated with agriculture'*. There is nothing to say that the Inspector considered that changes of use permitted by the GPDO 2015 would be excluded from this, or that the use of the wording 'associated with' agriculture implied flexibility. On the contrary such interpretations and flexibility would be at odds with the phrase, which is both precise and emphatic, and includes the word 'shall', a word which the Judge found did not admit discretion in the Royal London case.

15. In Dunoon, although the Judge noted no express exclusion of the GDO, he also went on to say there was no implied exclusion. Therefore, although a GDO was not expressly referred to in condition 1 or in the Inspector's decision letter, it is appropriate to consider if it was implied. When the wording of condition 1 is read in the context of the reasoning in the Inspector's decision letter it is evident that it was significant that the building was within the Green Belt, had been used for other non-agricultural uses, and that the Design and Access Statement indicated an intended occasional non-agricultural use. Having regard to national Green Belt policy (in PPG2 at the time) he reasoned that the building would be inappropriate development in the Green Belt if used for the other uses, but would not be inappropriate development if it was a building for agricultural purposes. It is therefore clearly implied in the Inspector's reasoning that he intended condition 1 to do more than merely clarify, or avoid doubt over the authorised use. When read as a whole, and particularly paragraphs 23 and 24, the decision indicates clearly that the Inspector intended condition 1 to exclude other uses by restricting the use of the building 'solely' to uses for purposes associated with agriculture.

16. Given that the Inspector's considerations included uses not-associated with agriculture, I also find the meaning of the phrase 'uses associated with agriculture' is plain. I am not persuaded that the Council's opinion that a list of possible agricultural related industrial uses for the building would fall with Class B1 demonstrates a lack of clarity. Whether or not such uses would be associated with agriculture would require judgements based upon the specific facts of each proposal and could be clarified by an application for a lawful development certificate under s191 of the Act.

17. The provisions of Class R (and formerly Class M) were not in force at the time that condition 1 was written in March 2012. Had they been then matters might be otherwise, but I am considering the appeal before me with the condition as written and in relation to the statutory provisions in force at this time. Whether or not the condition should be changed in the light of the provisions of Class R is not before me. Equally, I do not consider relevant to this appeal an argument that the conditions of Schedule 2, Part 6 of the GPDO 2015 for the erection of an agricultural building would be less restrictive than condition 1. Both of these matters would, in the first instance, be for the local planning authority to consider as an application under s73 of the Act.

18. I conclude that condition 1 is intended to have the effect of limiting the use of the building without discretion, and that the wording is sufficiently clear, precise and emphatic to reasonably and unequivocally imply exclusion of the provisions of the GPDO 2015 in respect of changes of use.

Conclusion

19. Having regard to all matters raised, including the objections from third parties, I conclude that condition 1 of planning permission 11/00341/FULL excludes the provisions of Part 3, Class R of the GPDO 2015 and the proposal is for a change of use of a building which would be contrary to the provisions of condition 1. Therefore, an application for planning permission is required for the proposed use. Such an application would be for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO 2015. Accordingly, the appeal is dismissed.

Helen Heward

INSPECTOR