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## Appeal Decision

Site visit made on 22 October 2018

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 November 2018

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### Appeal Ref: **APP/Q3115/W/18/3204899**

### **The Old Dairy Building, Camoys Farm, Chiselhampton, Oxford OX44 7UZ**

- 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 PA, Paragraph PA.2 (1)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Richard Taylor against the decision of South Oxfordshire District Council.
  - The application Ref P17/S3843/PDO, dated 26 October 2017, was refused by notice dated 14 December 2017.
  - The development proposed is the change of use from premises in light industrial use (Class B1(c)) and any land within its curtilage to dwellinghouses (Class C3).
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class PA, Paragraph PA.2 (1)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from premises in light industrial use (Class B1(c)) and any land within its curtilage to dwellinghouses (Class C3) at land at The Old Dairy Building, Camoys Farm, Chiselhampton, Oxford OX44 7UZ in accordance with the terms of the application Ref P17/S3843/PDO, dated 26 October 2017, and the plans submitted with it and subject to the following condition:

- 1) Prior to the commencement of the development a phased risk assessment shall be carried out by a competent person in accordance with current government and Environment Agency Guidance and Approved Codes of Practice. Each phase shall be submitted to and approved in writing by the Local Planning Authority.

Phase 1 shall incorporate a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model. If potential contamination is identified in Phase 1 then a Phase 2 investigation shall be undertaken.

Phase 2 shall include a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and if significant contamination is identified to inform the remediation strategy required by Phase 3.

Phase 3 requires that a remediation strategy be submitted to and approved by the LPA to ensure the site will be rendered suitable for its proposed use. The development shall not be occupied until any previously approved remediation strategy has been carried out in full and a

validation report confirming completion of these works has been submitted to and approved in writing by the Local Planning Authority.

## **Background**

2. The building was originally built as an agricultural building. In 1993 planning permission was granted for a change of use for the storage and distribution of agricultural chemicals. A condition was imposed limiting the use of the building to the uses specified in the application. In 2001, planning permission, Ref P00/N0776 was granted for the "Use of building for Class B8, B1(b) and B1(c) purposes" ('the 2001 permission').
3. The 2001 permission was granted subject to conditions. Condition 2 stated: "That the use of the building shall be limited to the uses defined in Classes B8, B1(b) and B1(c) of the schedule of the Town and Country Planning (Use Classes) Order 1987". The reason for the condition was "To protect the amenity of the area in accordance with Policy E6 of the Council's adopted South Oxfordshire Local Plan".
4. In 2018, a further planning permission was made under S73 of the Town and Country Planning Act 1990 to remove condition 2 of the 2001 permission. The permission was granted, but a new condition was re-imposed. It is common ground that this permission has not been implemented and, therefore, the prevailing condition relevant to this appeal is condition 2 of the 2001 permission.

## **Main Issue**

5. The main issue is whether the permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order') is prevented by virtue of condition 2 of the 2001 permission.

## **Reasons**

6. Article 3(4) of the Order sets out that the planning permission for the various classes of development described as permitted development (PD) in Schedule 2 is not given if such development would be contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990 otherwise than by the Order. Central to this issue is whether condition 2 of the 2001 permission is a condition that has the effect of removing those PD rights in accordance with Article 3(4).
7. I have been referred to the extensive case law surrounding the ability of conditions to restrict PD rights. The cases of *Dunoon Developments Ltd v SSE & Poole BC (1993) 65 P&CR 101* and *Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] EWHC 534 (Admin); [2017] EWCA Civ 192* are of particular relevance.
8. In *Dunoon* the court considered a situation where planning permission had been granted for a car showroom, car sales, service and maintenance and offices. The main building had begun to be used as an indoor market and it had been argued that a condition attached to the planning permission limiting the use to the display, sale and storage of new and used cars, excluded the impact of the then 1988 General Development Order to effect a change of use from motor sales to a shop. It was held that the contested condition did

- nothing more than define the ambit of the planning permission. To exclude the application of a general development order, there must be something more.
9. In *Dunnett*, the Court considered a condition, which included words that the building in question should be used for a specified purpose and “for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained”. It was held that the wording of the condition, when read as a whole alongside the reason for its imposition does prevent the operation of the Order.
  10. The condition in question here does not include the words “for no other purpose”, or “whatsoever, without express planning consent from the Local Planning Authority first being obtained”. Its terminology is far less emphatic. However, turning back to *Dunoon* the key question is whether the condition simply defines the ambit of the permission or whether there is, in fact, something more. In this regard, the Council suggest that the fact that the condition refers to specific use classes sets it apart from the condition in *Dunoon* where the condition effectively limited the use to certain permitted activities within the wider scope of the description of the development that was permitted.
  11. However, in referring to the specific use classes, the condition here, as in *Dunoon* does limit activities to those within a specific use class. Use Class B1 is defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) with reference to 3 subsections, (a) as an office use, (b) for research and development of products or processes, or (c) for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area.
  12. Ordinarily, a building being used for purposes within Use Class B1 (b) or B1 (c) would not require permission to change to a use within B1(a). However, it may well be that this condition does prevent those uses in subsection (a). The condition would, therefore, be very similar to that in *Dunoon* which, in limiting the use to particular components of a more widely defined use, does nothing more than define the ambit of the permission.
  13. The Council suggests that without the condition, there would be limited control over other uses and that the only plausible reason for its imposition is to prevent the operation of the Order on the basis that other uses could have more wide reaching amenity implications. The stated reason for the condition supports this view.
  14. However, the appellant points out that changes between Use Classes B1 and B8 would have been the only available PD at the time, so the Council’s suggestion that the 2001 case officer may have been concerned about B2 or non B-Class uses seems unlikely. There is nothing to lead me away from this. As such, I do not find that the stated reason for the condition is sufficiently detailed about the impacts it was concerned with as to prevent the operation of the Order when read alongside the condition as a whole.
  15. The Council has referred to me to 4 appeal decisions which it believes support its interpretation of the condition. The first<sup>1</sup> concerned a condition that sought to ensure that the use in question remained as ancillary to another pre-existing

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<sup>1</sup> APP/U1240/A/14/2225668

use. The second<sup>2</sup> concerned a condition that restricted the building to agricultural use only, the inclusion of “only” making the condition more emphatic than in the current case. The third<sup>3</sup> concerned a condition specifically preventing use for sleeping accommodation, which would clearly exclude any residential use. The fourth<sup>4</sup> restricted the use solely to uses within Class B1.

16. Whilst the fourth appeal referred to seems to be the most similar in the sense that the condition related to a specified use class, I do not have the full wording of the condition before me. I note, however, that the Inspector’s decision describes the condition with the word “solely”, which like the second example makes the condition more emphatic than the current case. Having read the decisions, they do not appear to me to be directly comparable to the condition now in question. Furthermore, taken at face value, none of the decisions undertake a full analysis of the case law that I have been referred to and this significantly reduces the weight that I attach to them.
17. For the reasons given above, I consider that condition 2 of the 2001 permission does nothing more than define the ambit of the planning permission. It does not, therefore, engage Article 3(4) of the Order so as to prevent the operation of the PD rights described therein. The proposal is, therefore PD.

### **Other matters**

18. Having established that the building benefits from the PD rights described in Schedule 2, Part 3, Class PA, it is necessary to go on to consider whether prior approval should be given. Whilst in considering the initial application the Council did not do this, their appeal statement indicates that prior approval can be given, subject to conditions. It can be taken from the Council’s appeal statement that the only prior approval issues of concern are those relating to the contamination risks in relation to the building and the transport and highways impacts of the development. There is nothing to lead me away from this position.
19. It is common ground that contamination issues can be dealt with by way of a condition. The Council’s suggested condition requires a desk study followed (if necessary) by intrusive investigations to establish the extent of any contamination. I note that the appellant suggests that contamination of the site is unlikely and the reasons for this. However, given the history of agricultural and industrial uses at the site, a condition is necessary. As investigations must be carried out prior to any building work, such a condition must be dealt with prior to the commencement of development.
20. Turning to the transport and highways impacts of the development the Council has recommended a condition that further details of the parking and turning area are submitted to them for approval in the interests of highway safety. However, there is already a suitable area for parking at the building. Even if the development were carried out in such a way as to reduce the available space and make it somewhat awkward, given the substantial distance of the building from the highway, it is unlikely that any additional parking or excessive manoeuvring on the highway would occur. I, therefore, find that such a condition is not necessary.

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<sup>2</sup> APP/Z3825/A/14/2223822

<sup>3</sup> APP/X1925/A/14/2223832

<sup>4</sup> APP/X2410/W/15/3005523

## **Conclusion**

21. For the reasons given above I conclude that the appeal should be allowed and prior approval should be granted.
22. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class PA is subject to the condition PA.2(2), which specifies that the development shall be completed within a period of 3 years starting with the prior approval date. For the reason given above this permission is also subject to the one additional condition set out in my formal decision.

*M Bale*

INSPECTOR