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Appendix 2

King's Lynn and West Norfolk Borough Appeal Decision (APP/V2635/A/13/2203764)

Planning Minister Nick Boles MP written statement to Parliament on 6 February 2014



Appeal Decision

Site visit made on 7 January 2014

by **David Spencer BA(Hons) DipTP MRTPI**

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

Decision date: 28 February 2014

Appeal Ref: APP/V2635/A/13/2203764

46 High Street, Northwold, Norfolk IP26 5LA

- 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, Paragraph J2 of the Town and Country Planning General Permitted Development Order 1995 (as amended).
 - The appeal is made by Mr A Bunyan against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 13/00001/CUPD, dated 12 June 2013, was refused by notice dated 7 August 2013.
 - The development proposed is the change of use from B1(a) (Offices) to Class C3 (dwellinghouse).
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Paragraph J2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the change of use from B1(a) (Offices) to Class C3 (dwellinghouse) at 46 High Street, Northwold, Norfolk IP26 5LA.

Application for costs

2. An application for costs was made by Mr Bunyan against the Council and is the subject of a separate Decision.

Procedural Matters

3. The provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO) require the local planning authority to assess the proposed development against the criteria set out in Paragraph J2, taking into account any representations received. My determination of this appeal has been made in the same manner.

Reasons

4. The appeal site at 46 High Street, Northwold is a modest property whose overall character and appearance is one of a rural cottage which blends into the otherwise residential streetscene in this part of the village. The property is currently vacant and I was able to inspect the internal layout which accorded with those on the submitted plan. There is no dispute between the parties that the lawful use of the appeal property is a B1(a) office. Having regard to the appeal site and its circumstances, I am satisfied that the appeal proposal is otherwise permitted development under Class J of the GPDO as amended.

5. Turning to paragraph J2 of the GPDO the 3 criteria against which the appeal prior notification determination must be assessed are flooding, highways and contamination. In this regard the consultation process in relation to the appeal site has elicited no adverse response. I have also noted that the Council undertook the required local consultation to which there was no response.
6. Against this background it would appear from the evidence before me that there are two sequential questions which need to be resolved by this appeal. Firstly, what plans needed to be submitted for a prior notification determination under Class J? Secondly, what is the proposal which should be the subject of the prior notification determination? To a degree the second is parasitic on the first, recognising that to some extent these matters have become conflated in this case. However, these two questions stem from the reference at the end of Paragraph J2 which states *"...and the provision of paragraph N shall apply in relation to any such application."*
7. Paragraph N of GPDO, is a procedural paragraph. At paragraph N(2)(b) there is a requirement that an application for a prior notification determination under Class J shall be accompanied by a plan indicating the site and showing the proposed development. The submitted plan, referenced 'Dwg No 2788.01', included a location plan, a site plan, and existing floor plans, elevations and sections. It is a professionally drawn plan to recognisable scales.
8. The Council concluded that these plans were not sufficient for the purposes of paragraph N(2)(b) and advised the appellant that proposed floor plans would be needed to assess the intention of the proposal. The Council's approach was influenced by paragraph N(8)(b) of the GPDO which requires a local planning authority in such determinations to *"...have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application;"*. The Council interpreted this wording of the GPDO as enabling an unrestricted widening of the criteria against which Class J prior notification determinations should be assessed.
9. On this basis the Council requested further information, in the form of additional floor plans and details of proposed private amenity space. The appellant provided such details in a further plan, referenced 'Drawing Number 3086.01 rev A'. The appellant has submitted evidence that this plan was submitted on the proviso that it should not form part of the prior notification determination. The Council's sole reason for refusal relates to amenity considerations set out in the National Planning Policy Framework (the Framework) in response to concerns about operational details presented in the additional drawing 3086.01 rev A.
10. Turning to the first issue of the necessary plans. Notwithstanding an initial deficiency on the checklist of the Council's prior notification form for Class J developments I am satisfied that drawing 2788.01 is of sufficient clarity to enable the site to be identified and for consultees to undertake their assessment against the criteria in paragraph J2. The plans are sufficient for 'the proposed development' which for Class J is described as: "Development consisting of a change of use of a building and any land within its curtilage to a

use falling within Class C3 (dwellinghouse)....from a use falling within Class B1(a) (offices)...."¹.

11. Moreover, as prior notification does not authorise any operational development I am satisfied that the appellants' intention was confined to the principle of a change of use for the vacant building. Consequently it was not necessary that drawing 3086.01 revA should have been submitted. It should have been reserved for a separate planning application. I therefore conclude that that the level of information provided on the submitted drawing 2788.01 met the requirements of paragraph N(2)(b) of the GPDO.
12. Turning to the second issue of whether the amended GPDO enables a wider assessment beyond the three criteria in Paragraph J2. To my mind, a scenario where there is no restriction on what can be considered in the Framework when determining prior notifications would not be an acceptable one. It would introduce significant uncertainty and delay. As such it would run counter to the rationale behind amending the GPDO to include Class J. Given the chronology that the Framework pre-dates the amendments to the GPDO I am more persuaded by the appellants argument that the reference in paragraph J2 to the provisions in Paragraph N and in turn N(8)(b) is restricted to the relevant parts of the Framework which the Authority can consider under the notification.
13. It would therefore not be necessary, in my opinion, for a local planning authority to request additional information beyond material relating to transport and highway impacts, contamination risks and flooding risks. This echoes paragraph N(7) of the GPDO which limits what additional information can be required by a local planning authority of a developer to the three narrow criteria in paragraph J2.
14. On the basis of the above I conclude that the local planning authority misapplied paragraph N(8)(b) and in doing so requested additional information which should not have formed part of the prior approval determination. As such, the appeal proposal should have been strictly assessed against the criteria in Paragraph J2, and if necessary, the related parts of the Framework. It should not have been refused against the objectives of the Framework as they relate to amenity (paragraph 17) or standards of design (paragraphs 56 and 58).
15. Having considered the consultation responses and having observed the site and its surroundings I therefore conclude that the appeal proposal would not result in any adverse impacts relating to transport and highways, contamination risks and flooding risks. I note the site is within the Northwold Conservation Area but as the proposed development is limited to a change of use with no operational details I am satisfied that the character and appearance of the conservation area would be preserved.

Conclusions

16. I conclude that the appeal should be allowed and approval granted. In granting approval the Appellant should note that the GPDO requires at Paragraph N10(b) that the development shall be carried out in accordance with the details provided in the application. For the avoidance of doubt and in the

¹ Statutory Instrument 2013:1101 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

interests of proper planning the approved plan is Dwg No 2788.01 dated 10 March 2010.

David Spencer

INSPECTOR

Costs Decision

Site visit made on 7 January 2014

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 28 February 2014

**Costs application in relation to Appeal Ref: APP/V2635/A/13/2203764
46 High Street, Northwold, Norfolk IP26 5LA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Bunyan for a full award of costs against the Borough Council of King's Lynn and West Norfolk.
 - The appeal was against the refusal to grant approval as required under Schedule 2, Part 3, Paragraph J2 of the Town and Country Planning General Permitted Development Order 1995 (as amended) for the change of use from B1(a) (offices) to C3 (dwellinghouse).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Circular 03/2009, *Costs Awards in Appeals and Other Planning Proceedings* (the Circular), advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appeal relates to a refusal to approve a prior notification determination in accordance with Schedule 2, Part 3 of the Town and Country Planning General Permitted Development Order 1995 (as amended) (the GPDO). In particular, the provisions of Paragraphs J2 and N(2) and N(8) and how they should be interpreted.
4. The Council's reason for refusal states that the proposal presents a number of operational developments, the result of which fails to ensure a good standard of amenity, contrary to provisions set out in the National Planning Policy Framework (the Framework). As set out in my appeal decision I have found that the initially submitted plan was in accordance with the relevant procedural requirements. As such the Council's determination should have been limited to the change of use as per the definition of Class J development.
5. The Council submits that it has not been unreasonable, when applying the link in paragraph J2 to the provisions in paragraph N, to interpret paragraph N(8)(b) as permitting a widening of the assessment criteria to include any provision within the Framework. In particular the reference in paragraph N(8)(b) to have regard to the Framework "...as if the application were a planning application;" I recognise that on its own this wording could be

regarded as ambiguously justifying the Council's interpretation. However, the wider context surrounding the introduction of Class J to the amended GPDO is widely understood. Moreover, other parts of Paragraph N restrict themselves to the 3 criteria in Paragraph J2. The Council has presented no evidence that it sought legal advice or any external clarification on this critical point. Instead it has relied on its own interpretation which was only confirmed in an email to the appellant some 7 days before the refusal was issued. As set out in my appeal decision, I have concluded that given the chronology between the Framework and the amendments to GPDO, the reference to the former in paragraph 8(N)(b) of the latter is solely in respect of the 3 criteria in paragraph 2. Any other interpretation would run counter to the rationale behind the amendment to the GPDO.

6. As such the determination should have been narrowly assessed under the 3 criteria set out in paragraph J2. Consequently the Council has unreasonably requested additional information which should not have formed part of the determination process for a change of use. Whilst I accept the Council's submission that the content of the reason for refusal meets the requirements of paragraph B16 of the Circular, it nonetheless remains that the reason for refusal is flawed. Particularly as there has been no adverse consultation response to the proposed change of use. As such, the Council has sought to prevent a development which should clearly be approved, which in accordance with paragraph B15 of the Circular runs the risk of a costs award.
7. In my view, from the evidence before me, the Council had not sufficiently disengaged itself from previous but similar pre-application scheme and consequently had not applied the fresh approach required by the changes to the GPDO. As a consequence I find that the appellant's costs in mounting the appeal were therefore unnecessarily incurred and an award for costs is justified.
8. For these reasons unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that King's Lynn and West Norfolk Borough Council shall pay to Mr A Bunyan, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to King's Lynn and West Norfolk Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

David Spencer

INSPECTOR.



Menu

Written statement to Parliament Change of use: new homes

- Organisation:** Department for Communities and Local Government
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)
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- Minister:** **Nick Boles MP** (<https://www.gov.uk/government/people/nick-boles>)
- Location:** Parliament

Written Ministerial Statement by Planning Minister Nick Boles on change of use to provide new homes.



In May 2013, the coalition government amended legislation to allow for offices to convert to homes without having to apply for full planning permission. The policy goal was to make it easier to convert redundant, empty and under-used office space into new homes, promoting brownfield regeneration, increasing footfall in town centres and boosting housing supply.

Providing new homes

These new flexibilities have been well received by the housing industry and are helping to bring forward much needed new homes across England. A recent survey by Estates Gazette (10 January) has found that there were more than 2,250 applications for change of use from office to residential in the first 6 months since this change was introduced.

Some of these developments are, in themselves, each set to deliver more than 100 homes. By making efficient use of existing buildings, we are helping to tackle the housing shortage across England whilst simultaneously creating jobs in the construction and services industries. The significant take-up is good news.

Need for certainty

Unlike other permitted development rights, and recognising that this new national right could affect areas differently, we offered local authorities the opportunity to seek an exemption where they could demonstrate an adverse economic impact. All requests for exemption underwent a robust and thorough assessment. In total, 33 areas were exempt in 17 local authorities. We kept in place a light-touch "prior approval" process, to allow any transport, contamination and flooding issues to be addressed by councils; under a "prior approval" process, councils can still refuse the application, on these set grounds.

The specific secondary legislation was laid and scrutinised through the appropriate Parliamentary processes. The London Borough of Islington, and others, recently challenged this exemption process in the courts. However, their claims were dismissed by the High Court and have not been appealed.

Disproportionate use of Article 4

With permitted development rights, there may be unique circumstances where a local authority deems it appropriate to remove a national right by using what is known as an Article 4 direction.

To ensure these powers are used appropriately, local authorities are required to notify my department whenever they make a direction. This is different from the regime under the last administration where Secretary of State's express approval was required for most Article 4 directions; now the Secretary of State has a reserve power. Importantly, the office to residential process operates differently from other permitted development rights, given the exemption process.

I am now aware of 8 local authorities who have made directions which prevent office to home conversions under national rights. These directions vary in extent, some apply to entire local authority areas and others are targeted at specific sites.

Having reflected on the reasoned justification presented by each authority for their Article 4 direction, and given the special exemption process which had already taken place, it is considered that the London Borough of Islington and Broxbourne Borough Council have applied their directions disproportionately.

My department is therefore writing to these authorities to request that they consider reducing the extent of their directions so that they are more targeted. This will ensure that offices which should legitimately benefit from this national right can do so. Ministers are minded to cancel Article 4 directions which seek to re-impose unjustified or blanket regulation, given the clearly stated public policy goal of liberalising the planning rules and helping provide more homes.

Avoiding unjustified levies on the new homes

We are also aware that some local authorities may be unclear on the correct intention of the detail provisions of national legislation for office to home conversions. In some instances, authorities do not appear to have applied the correctly intended tests to determine applications for prior approval and have sought to levy developer contributions where they are not appropriate (on matters unrelated to the prior approval process). To ensure the permitted development rights are utilised fairly across England, my department will update our planning practice guidance to councils to provide greater clarity on these points. Unjustified state levies should not be applied in any attempt to frustrate the creation of new homes.

Conclusion

These practical planning reforms are providing badly needed new homes on brownfield sites, close to urban locations and transport links, at no cost to the taxpayer.

Yet a small minority of town halls are trying to undermine these reforms, not least, since they are unable to hit such builders with state levies or since they may have an irrational objection to more private housing. Yet, these conversions coming forward will help offer competitively priced properties, accessible to hard-working people. Moreover, those who seek to oppose these changes need to spell out exactly where they think new homes should go instead given the pressing demand for housing and the need to protect England's beautiful countryside.

Ministers wish to send a clear message to the housing industry that we will act to provide certainty, confidence and clarity, and that we are supporting their investment in these new homes to bring under-used property back into productive use as housing.

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