The Planning Inspectorate

Appeal Decision

Site visit made on 16 March 2021

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2021.

Appeal Ref: APP/Y3805/W/20/3261736
Penhill Court, Penhill Road, Lancing, BN15 8HE

- 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 20 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Jeremy Davies against the decision of Adur District Council.
- The application Ref NOTICE/0014/20, dated 14 August 2020, was refused by notice dated 7 October 2020.
- The development proposed is application for prior approval for construction of two additional storeys of 5 new dwellings immediately above the existing detached block of flats.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Schedule 2, Part 20 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (2015 GPDO), planning permission is granted for the construction of new dwellinghouses on detached blocks of flats subject to the limitations, conditions and restrictions set out in Part 20, and the requirement for the developer to apply for prior approval.

3. The provisions under Part 20 Class A were introduced as an amendment to the 2015 GPDO through the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (2020 Regulations), which came into effect on 1 August 2020.

4. Where an application is made for prior approval for development that is allowed by paragraph A. to Class A of Part 20, paragraph B.(3)(a) provides that the local planning authority may refuse the application where it considers that the proposed development does not comply with any conditions, limitations and restrictions specified in Part 20 as being applicable to the development in question.

Main Issues

5. I consider the main issues in this appeal to be: (a) whether the proposed development complies with the conditions, limitations or restrictions applicable to development permitted; and (b) if the development is permitted, the effect of the proposal on the amenity of existing neighbouring occupiers.

Reasons

Permitted development

6. Paragraph A. to Class A of Part 20 states that development consisting of the construction of up to two additional storeys of new dwellinghouses above the topmost storey of an existing purpose built detached block of flats will constitute permitted development subject to any of the limitations, conditions or restrictions specified in Part 20. In relation to the latter, paragraph A.1(o)(vii) states that development will not be permitted by Class A if the land or site on which the building is located is or forms part of land within 3 kilometres of the perimeter of an aerodrome.

7. The Appellant and the Council do not dispute that the appeal site lies within 3 kilometres of the perimeter of an aerodrome, namely Shoreham Airport. However, the parties disagree as to whether the reference to an 'aerodrome' applies to Shoreham Airport and as a consequence whether the limitation set out in paragraph A.1(o)(vii) applies to the proposed development. The Council contend that Shoreham Airport does fall within the limitations in paragraph A.1(o)(vii) and that the proposed development is not therefore permitted development.

8. Article 2 of the 2015 GPDO defines 'aerodrome' as:

> "aerodrome" means an aerodrome as defined in [paragraph 1 of Schedule 1 to the Air Navigation Order 2016] 2 which is— (a) licensed under that Order, (b) a Government aerodrome, (c) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft, (d) one used by aircraft engaged in the public transport of passengers or cargo or in aerial work, or (e) one identified to the Civil Aviation authority before the 1st March 1986 for inclusion in the UK Aerodrome Index, and, for the purposes of this definition, the terms "aerial work", "Government aerodrome" and "Public transport" have the meanings given in [paragraph 1 of Schedule 1 to that Order];

9. Based on this definition and the evidence before me, I am satisfied that Shoreham Airport is an 'aerodrome' for the purposes of the 2015 GPDO. This finding is based, firstly, on the fact that Shoreham Airport falls within the definition of an aerodrome in paragraph 1 of Schedule 1 to the Air Navigation Order 2016 (ANO 2016), specifically an area of land affording facilities for the landing and departure of aircraft. Secondly, as Shoreham Airport is licensed under the ANO 2016. This licence is issued by the Civil Aviation Authority which enables the airport to be used by aircraft in the public transport of passengers or for the purpose of flying instruction.

10. The above findings are supported by the consultation response and documentation provided by the operators of Shoreham Airport, referred to in the Council's Planning Committee Report.

11. The Appellant argues that the GPDO does not contain a definition of 'aerodrome'. As I have found above, that is not correct. I also note, in this respect, that my finding is consistent with those reached by the Council's own legal section in their advice dated 28 September 2020. The Appellant has not challenged that legal advice.

12. The Appellant has referred to the 'Interpretation of Part 20' (paragraph C.) in the 2020 Regulations in that it does not include any reference to or definition of 'aerodrome'. However, paragraph C. sets out the meaning of words and

phrases included in Part 20 that are not already defined under Article 2 of the 2015 GPDO. The definitions and meanings in paragraph C. must be read therefore in conjunction with those in Article 2.

13. The Appellant contends that paragraph A.1(o)(vii) should only apply to aerodromes shown on a 'safeguarded map' and draws support for this from paragraph B.(8) of Class A to Part 20. As no 'safeguarding map' has been provided by the local Planning authority, the Appellant contends that paragraph A.1(o)(vii) should not apply to Shoreham Airport. I do not agree. The reference in paragraph A.1(o)(vii) is to an 'aerodrome', and neither this paragraph nor Article 2 refer to a 'safeguarded' aerodrome. In addition, the limitation set out in paragraph A.1(o)(vii) is not cross-referenced to or subject to any other conditions, limitations or restrictions in Part 20.

14. Moreover, paragraph C. of Class A to Part 20 includes a definition of "technical sites", which in turn refers to the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosive Storage Areas) Direction 2002 (Direction). This Direction identifies certain 'safeguarded' civil aerodromes by reference to a 'safeguarding map', selected on the basis of their importance to the national air transport system. These officially 'safeguarded' aerodromes are distinguished from and separate from other civil aerodromes. Thus, not all licenced aerodromes, such as Shoreham Airport, are subject to this Direction or are 'safeguarded'. Even so, as the appeal proposal would not constitute permitted development there is no requirement to consider or to go to any of the other limitations, conditions and restrictions in paragraph A.2 or paragraph B. of Class A to Part 20.

15. Reference has also been made to the fact that the operators of Shoreham Airport did not raise an objection to the proposed development. Whilst that does not affect the above findings, I note that the operator has raised concerns over the implications of interpreting 'aerodrome' as only applying to 'safeguarded aerodromes' given the precedent that this may set nationally.

16. Accordingly, I find that the appeal site is located within 3 kilometres of the perimeter of Shoreham Airport which falls within the definition of an 'aerodrome' as set out in Article 2 of the 2015 GPDO. As a consequence, the appeal proposal does not constitute permitted development by virtue of paragraph A.1(o)(vii) of Class A to Part 20 of the 2015 GPDO.

Living conditions – neighbouring occupiers

17. As I have found above, the proposed development is not permitted development. As a consequence, there is no requirement or need to go to paragraph A.2 of Class A to Part 20 and thus no requirement to make a determination on the prior approval matters that have been raised in this particular case. This approach is consistent paragraph B.(3)(a) of Class A to Part 20.

Conclusions

18. For the reasons given above, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR