

Appeal Decision

Site visit made on 22 August 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 9th November 2016

Appeal Ref: APP/R3650/W/16/3148919

Kilinside Farm, Moor Park Lane, Farnham, Surrey GU10 1NS

- 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 Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr R Milton against the decision of Waverley Borough Council.
 - The application Ref PRA/2016/0002, dated 7 January 2016, was refused by notice dated 1 March 2016.
 - The development proposed is the change of use of two agricultural barns and associated building operations to provide three dwellinghouses.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Paragraph Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of two agricultural barns and associated building operations to provide three dwellinghouses at Kilinside Farm, Moor Park Lane, Farnham, Surrey GU10 1NS in accordance with the terms of the application Ref PRA/2016/0002, dated 7 January 2016 and the plans submitted with it, subject to the standard conditions set out in the Order.

Costs application

2. An application for an award of costs has been made by the appellant against Waverley Borough Council. This application is the subject of a separate decision.

Procedural matter

3. The appellant has entered into a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990, which makes provision for the payment of a financial contribution to mitigate the effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA). I shall refer to this in more detail below.

Main Issues

4. The main issues are:
 - i) whether the proposal is permitted by the Order, and
 - ii) whether it is necessary to mitigate the effect of the proposal on the SPA.
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Reasons

Is the proposal permitted by the Order?

5. The appeal proposal relates to parts of two buildings "The Big Barn" and the "Old Dairy" located within a group of farm buildings that enclose three sides of a yard. The Council contends that the proposal falls outside of the ambit of the Order for two reasons. The first of these is that the site was not used solely for an agricultural use as part of an established agricultural unit on the requisite date as required to fulfil the limitation set out in Q.(1a).
6. Whilst other buildings within the group may have been used for other purposes, there is no evidence to suggest that the appeal buildings have been used for anything other than agriculture. The Council argues that "the site" includes buildings within the group that have been used as a holiday let, farm shop and gallery, and that although these uses were not undertaken in the buildings which are proposed to be converted, they nevertheless form part of "the site", and bring the proposal outside of the permitted class of development.
7. Class X of the order provides interpretation of some of the terms used in Part 3 of the Order. It defines "site" as meaning "the building and any land within its curtilage". "Building" is defined in Article 2 of the Order and includes "any part of a building". Curtilage is defined in Class X (for the purposes of Class Q) as meaning:
 - (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
 - (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,whichever is the lesser.
8. The Council's legal advice says that the correct interpretation is that "the site is/are the contiguous buildings and curtilage (as a whole as per the plans) which in truth form part of the established agricultural unit". However, this ignores the definition of "the site" contained in the Order. I take the meaning of "the site" to mean the building or part of a building and its proposed curtilage to which the application relates. The curtilage has been defined to comply with the second, more limited definition referred to above. I can see no authority to take a wider meaning that "the site" should encompass buildings which have nothing to do with the application, even if they are part of a wider agricultural unit or independent of it.
9. Third parties allege that part of the building has been rebuilt, but the part that they refer to relates to an adjacent building, and is not part of the "Old Dairy" which it is proposed to convert. They also allege that the buildings operations required to convert the "Big Barn" would fall outside those permitted operations specified in Q.1(i). I have had regard to the Planning Practice Guidance which indicates that the permitted development provisions do not include the construction of structural elements. I have had regard to s.55(2)(a) of the Town and Country Planning Act 1990 (as amended) which provides that acts of maintenance, improvement or other alteration, which would not materially affect the external appearance of the buildings, would not

amount to development. There is nothing before me, or from what I saw on site, which suggests that the extent of new work would amount to a rebuild.

10. I have had regard to the appeal decision referred to me¹ where the inspector in that case was not satisfied with the adequacy of structural information before him. However, that related to a lightweight steel-framed building where it was proposed to impose considerably greater loadings than is proposed here. The Big Barn has a substantial wooden frame and it is proposed to retain timber walls. From what I saw, I share the Council officers' assessment that the building would be capable of being converted as proposed within the provisions of the Order.
11. I therefore find that the application does not fall outwith the provisions of the Order as far as the use of the site is concerned.

Obligation

12. The site is within 5km of the Thames Basin Heaths Special Protection Area (SPA), designated because of its importance of providing a habitat for three species of bird subject to European protection. The Council has adopted a revised Thames Basin Heaths Avoidance Strategy in July 2016, which provides a mechanism for developers to mitigate the effect of new residential development within 5 km of the SPA by providing or contributing to Suitable Alternative Natural Greenspace (SANG).
13. Regulation 9 of the Conservation of Habitats and Species Regulations 2010 (the Regulations), requires that appropriate authorities have must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives. The determination of a prior approval is one of those functions, and thus it is a necessary pre-condition to any grant of approval that either the protected species would not be affected or that likely adverse effects on protected species are adequately mitigated.
14. The appellant suggests that the presence of the A31 dual carriageway, which lies between the site and the SPA, is likely to reduce the potential for harm from visitor pressure. Whilst I am aware of the extensive recreational green space available to the south of the site, because the site is within 3km of the SPA, well within the 5km zone where impacts are required to be mitigated, I cannot be sure that all or most recreational pressure from occupiers of the site would be diverted from the SPA. Under these circumstances, bearing in mind that I must be sure that no adverse effects would arise, I consider that mitigation is required. The appellant has indicated that a private SANG could be provided, but that would need to be the subject of a legal agreement to secure access across the whole site in perpetuity, and not just on public rights of way. As that has not been provided, I consider that it would not be a suitable means of mitigating the effect of the proposal.
15. As the appellant has submitted a unilateral undertaking which would make the contribution sought by the Avoidance Strategy, I am satisfied that adverse effects on the SPA would be adequately mitigated. Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010 places restrictions on the use of obligations when granting planning permission. In this case, that

¹ Ref: APP/L3245/W/16/3143625

permission is granted under the Order, and thus an obligation in connection with an application for prior approval is not an application for planning permission and is not covered by the "pooling" restriction contained in the Regulations. This, as well as the purposes for which the money would be spent, differentiates this case from the appeal decision referred to me the appellant². I consider that the obligation is necessary and otherwise satisfies the tests set out in the National Planning Policy Framework and the CIL Regulations.

Other matters

16. I have had regard to the level of traffic likely to be generated by the proposal and the impact on the living conditions of nearby residents. However, the number of movements associated with three additional dwellings would not be substantial, and taking into account the volume and nature of traffic which could reasonably be expected from the agricultural use of the buildings, I consider that the proposal would not materially harm neighbours' living conditions.
17. There is sufficient space within the curtilages shown to provide parking. If parking were to take place elsewhere, a separate planning permission may be required, and any application would be considered on its own merits.

Conditions

18. The Council has not suggested the imposition of any conditions, and I consider that none is necessary.

Conclusion

19. For the reasons given above, the appeal is allowed.

JP Roberts

INSPECTOR

² Ref: APP/R3650/W/15/3135815