
Appeal Decision

Site visit made on 31 January 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 20 February 2017.

Appeal Ref: APP/B9506/W/16/3153805

The Barn, Nuthooks House, Old Romsey Road, Cadnam SO40 2NP

- 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 O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Peter Day against the decision of New Forest National Park Authority.
 - The application Ref 16/00187 (undated) was refused by notice dated 5 May 2016.
 - The development proposed is change of use of office building (Use Class B1a) to dwelling (Use Class C3).
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) enables certain types of development to take place without the need for specific planning permission, provided certain criteria are met. Provisions exist under Schedule 2, Part 3, Class O for the change of use of an office to a dwellinghouse subject to limitations and conditions.
 3. Article 3(1) of the GPDO, by incorporating regulations 73-76 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations), imposes a condition requiring prior approval under these Regulations, that the local planning authority is satisfied that there is no adverse effect on the integrity of any European site, before permitted development can go ahead.
 4. The local planning authority issued a decision in response to application Ref 16/00187, which concluded that the proposal was not permitted development. Consequently, a refusal was given under paragraph W(3) of the GPDO. The Authority's decision also concluded that the in-combination effects of the proposal on nearby European sites would be significant.
 5. Regulations 73-76 of the Habitats Regulations allow for the pre-commencement condition to be discharged through a separate process to which there is a right of appeal. Therefore, the appellant sought to use a separate process to obtain
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the consent required under Regulation 75.¹ The local planning authority declined to consider the application and the appellant has appealed against non-determination. Further, a signed and executed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal documentation. This seeks to secure a financial contribution towards mitigating the impact of the residential development on the integrity of nearby European sites.

6. However, the issue of whether the proposal is permitted development remains disputed. The requirement for prior approval is worded as a condition attached to the grant of permission by Article 3(1) of the GPDO, and so prior approval only becomes relevant if the proposed development falls within the permitted development right. The Authority has dealt with its concerns by determining the application on the basis that the proposal could not be permitted development. This approach is provided for by paragraph W(3).
7. Although the appellant has indicated that the appeal is not against this determination, it is necessary for me to first consider whether the proposal is permitted development. As European sites are at issue, it is also necessary for me to consider whether this condition has been complied with, as part of the assessment of whether the development is permitted or not. I have therefore determined the appeal on the basis that is against application Ref 16/00187 and, in doing so, whether the Unilateral Undertaking discharges the pre-commencement condition under Regulations 73-76 of the Habitats Regulations.

Application for costs

8. An application for costs was made by Mr Peter Day against New Forest National Park Authority. This application is the subject of a separate Decision.

Main Issue

9. The main issue is whether the proposal satisfies the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 3, Class O.

Reasons

10. Article 3(4) of the GPDO states: "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". The original permission for the office use of the appeal building² was subject to the following condition: "The premises shall be used only for micro-computer software development or similar activities and for no other purpose whatsoever (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987". The appellant indicates that the office use has ceased and the restrictive condition does not apply. However, on the basis of the evidence before me, the lawful use of the building is as an office and in order for the Class O provisions to apply, the use must be lawful.
11. Consequently, due to the restrictive condition, the development is not permitted under Article 3(4) and an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed

¹ Letter dated 9 May 2016

² Ref T/APP/B1740/A/87/071849/P4 dated 17 December 1987

under the prior approval provisions set out in the GPDO. Moreover, I note that a previous application for a change of use from offices to residential was recently dismissed at appeal.³

12. Where it is intended to carry out development in reliance on the permission granted by a general development order, Regulation 74 of the Habitats Regulations requires an application to be made in writing to the appropriate nature conservation body for their opinion as to whether the development is likely to have a relevant effect. There is no evidence that the relevant notification has been made. I appreciate that that the Authority has adopted an approach, in consultation with Natural England, which sets out mitigation for residential development. It is on this basis that the appellant has sought to anticipate their advice. However, there is limited evidence that the mitigation offered in this case would be acceptable to the appropriate nature conservation body. Consequently, it has not been demonstrated that the Unilateral Undertaking discharges the pre-commencement condition under Regulations 73-76 of the Habitats Regulations.
13. I conclude on this issue that the proposal does not satisfy the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 3, Class O.
14. The appeal is therefore dismissed.

Debbie Moore

Inspector

³ Ref APP/B9506/W/15/3134182