



Appeal Decision

Site visit made on 11 July 2017

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 2nd August 2017

Appeal Ref: APP/C1760/W/17/3167564

Office Units 1 and 2, Shorts Farm, Scallows Lane, West Wellow SO51 6DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Schedule 2, Part 3, Class O of Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (as amended).
 - The appeal is made by Mrs Brenda Moody against the decision of Test Valley Borough Council.
 - The application Ref 16/02022/PDOS, dated 18 August 2016, was refused by notice dated 8 November 2016.
 - The development proposed is to convert the existing (two) self-contained offices into (two) self-contained flats.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the application is permitted development

Reasons

3. Article 3(1) of the GPDO incorporates Regulations 73-76 of the Conservation of Habitats and Species Regulations 2010. Regulation 73(1) provides that it is a condition of any permission granted by a general development order that development which is likely to have a significant effect on a European site, alone or in combination with other plans or projects, and not directly connected with or necessary to the management of the site, must not be begun until the developer has received written notification of the LPA's approval under regulation 75.
4. The two dwellings would result in additional residents which could result in disturbance mainly through recreation activities to certain bird species, including ground nesting species, associated with the New Forest Special Protection Area (SPA) given its proximity. In this regard, an Open Spaces Residents Survey 2014 indicates that there is a potential of in combination effect on the SPA from new residents recreational activities. Therefore the proposal would be likely to have a significant effect on the site and its conservation objectives. Under the New Forest SPA Mitigation-Interim Framework 2014, a contribution towards certain mitigation measures is required in the area where the proposed dwellings are to be located because additional recreation activity would be likely to have a significant effect on the SPA.

5. A Unilateral Undertaking (UU) has been submitted to secure a contribution for mitigation provision of the significant effect on the SPA. However the UU is not signed or witnessed and therefore is incomplete with little legal binding. Therefore the significant effect cannot be sufficiently reduced or overcome through mitigation measures. In respect of a planning condition, Planning Practice Guidance advises against a condition to secure monetary payments for schemes such as this. There are no alternative solutions before me which would have a lesser effect on the integrity of the site. Taking into account the adverse effect of the proposal, there are no imperative reasons of overriding public interest to set aside SPA nature conservation consideration in terms of human health, public safety or benefits of primary importance to the environment. For all these reasons, adopting the precautionary principle, I conclude that the proposal in combination with other developments could have a significant effect on the integrity of the SPA.
6. The Appellant considered that the details of the obligation had been agreed. Irrespective of this, the obligation remains deficient for the reasons indicated. On another matter, the Appellant has submitted additional bat survey information at the appeal stage. I have no reason to disagree with its findings or the comments of the Council's ecologist now raising no objections in respect of these protected species. However this consideration does not outweigh the failure of the proposal in respect of the Regulations 73-76 of the Conservation of Habitats and Species Regulations 2010.

Conclusion

7. In conclusion, the development cannot go ahead as permitted development because the development would adversely affect the significance of a European designated site in conflict with Article 3(1) of the GPDO. Having regard to the above and to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR