



Appeal Decision

Site visit made on 18 June 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2019

Appeal Ref: APP/U1105/W/19/3223541

Land at Canterbury Green, Colaton Raleigh, Devon EX5 1EY

- 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 3, Class Q, Paragraph Q.2.(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs K Jenkins against the decision of East Devon District Council.
 - The application Ref 18/2030/PDQ, dated 14 December 2017, was refused by notice dated 15 November 2018.
 - The development proposed is the creation of 1 dwelling, utilising the existing building together with a domestic curtilage.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q, Paragraph Q.2.(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the creation of 1 dwelling, utilising the existing building together with a domestic curtilage at land at Canterbury Green, Colaton Raleigh, Devon EX5 1EY in accordance with the terms of the application Ref 18/2030/PDQ, dated 14 December 2017, and the plans submitted with it, subject to the condition set out in Regulation 75 of the Conservation of Habitats and Species Regulations 2017.

Procedural matters

2. The site address and description of development above are taken from sections 3 and 4 of the application form respectively.
3. The application form used is for a change of use of the agricultural building to a dwellinghouse and for associated operational development. However, at section 4 of the form it is clearly stated that the application seeks only to establish the principle of conversion and that any external changes would be dealt with via a separate application under Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). I have, therefore, considered the appeal as a proposal under Class Q(a) which also appears to be the approach that was taken by the Council.
4. There is no dispute that the development complies with the provisions and limitations of Schedule 2, Part 3, Class Q of the GPDO and there is no reason for me to take a contrary view.

5. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 3, Class Q, Paragraph Q.2(2) require the local planning authority to assess the proposed development solely on the basis of the transport and highways impacts of the development; noise impacts of the development; contamination risks on the site; flooding risks on the site; and whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order ("the prior approval matters").
6. The Council's officer report indicates that no harm would arise in respect of those prior approval matters and there is nothing to lead me away from that position. The Council's objection to the proposal relates to the alleged impact on the East Devon Pebblebed Heaths Special Area of Conservation and East Devon Heaths Special Protection Area ("the European Sites").
7. Article 3(1) of the GPDO also indicates that any permission is also subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 ("CHSR"). In effect, Regulation 75 imposes a condition on any permission granted by the GPDO that is likely to have a significant effect on a European Site that development must not commence until a developer has received written notification of the approval of the local planning authority under Regulation 77. Regulation 77 requires that the local planning authority may approve the development only after having ascertained that it will not affect the integrity of the site.
8. I note the appellant's argument that a significant effect is not likely. However, Natural England disagree with that. Taking a precautionary approach and placing significant weight on their objection as the Statutory Nature Conservation Body, I find that a significant effect is likely and that Regulation 75 would be engaged.
9. However, regardless of that, this assessment and any subsequent decision as to the effect on the integrity of the sites is separate to the prior approval process under Schedule 2, Part 3, Class Q of the GPDO. Whilst I acknowledge that this does not resolve the dispute as to the overall effect on the integrity of the European Sites outlined in the Council's reason for refusal, consideration of that and any associated approval under Regulation 77 is not before me.
10. In accordance with Article 3(1) of the GPDO, Regulations 75 to 77 of the CHSR do not prevent me finding that the proposal is permitted development under the GPDO and granting prior approval under the conditions set out at Schedule 2, Part 3, Class Q. However, that is not to say the development can take place as that will be dependent on the outcome of a Regulation 77 application under the CHSR.

Conclusion

11. For the reasons given above I conclude that the appeal should be allowed.

M Bale

INSPECTOR