



Appeal Decision

Site visit made on 14 October 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2019

Appeal Ref: APP/P1133/W/19/3221698

Quarry Farm, Stancott, Chudleigh, South Devon TQ13 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Christopher Burton against the decision of Teignbridge District Council.
 - The application Ref 18/01934/NPA, dated 18 September 2018, was approved on 15 November 2018 and prior approval was granted subject to conditions.
 - The development permitted is conversion of agricultural buildings to office use under Class R of the GPDO 2015 (as amended).
 - The condition in dispute is No 3 which states that: In accordance with the requirements of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and Article 75 of the conservation of Habitats and Species Regulations 2017, no development shall commence unless and until the developer has received written notification from the Local Planning Authority that the proposals will not adversely affect the integrity of the South Hams Special Area of Conservation.
 - The reason given for the condition is: In the interests of biodiversity protection.
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Decision

1. The appeal is allowed and the prior approval Ref 08/01934/NPA for conversion of agricultural buildings to office use under Class R of the GPDO 2015 (as amended) at Quarry Farm, Stancott, Chudleigh, South Devon, TQ13 0DN, granted on 15 November 2018 by Teignbridge District Council is varied by replacing condition 3 with the following condition:
 - 3 No development shall take place until an application has been submitted to and approved in writing by the local planning authority under Regulation 77 of the Conservation of Habitats and Species Regulations 2017 and any mitigation has been carried out in accordance with that approval to ensure that the development will not adversely affect the integrity of the South Hams Special Area of Conservation.

Preliminary Matters

2. During the appeal site visit, I noted that an office building had been constructed within Barn B. The building was built on top of the concreted section of the barn's floor and its roof sat well below the internal level of the roof of the barn. The walls were constructed from timber, one of which was built against a number of the barn's internal stanchions. Otherwise, the office is a freestanding 'box-like' structure. I have no details from either party as to whether the office building is considered to constitute a lawful start of the development which was given prior approval or whether condition 3 of the same approval had been addressed prior to those works taking place.

Application for costs

3. An application for costs was made by Mr Christopher Burton against Teignbridge District Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the condition is necessary and reasonable, with regard to the effects of the proposal on protected sites.

Reasons

5. The appeal site lies within close proximity of the sustenance zone and flyway associated with the South Hams Special Area of Conservation (SAC) and also within 10km of the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation (hereafter collectively referred to as the protected sites). The South Hams SAC is designated primarily for its network of dry heathland and semi-natural dry grasslands but also for its greater horseshoe bat population.
6. Prior approval was granted by the Council for a change of use of the agricultural buildings to a use falling within Class R (flexible commercial uses) of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). Separate planning permission is required for any associated operational development necessary to change the use of the building or land under Class R. Paragraph W (13) of Schedule 2 of the GPDO indicates that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
7. The GPDO is a 'development order' which grants permission for development subject to the conditions expressly set out therein and subject also to other necessary conditions that the Council may impose. The development order is subject also to the provisions of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regs). Under regulation 75 of the Habitats Regs, a further condition of any permission granted by a development order is that where it would be likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of the site, it shall not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77.
8. The requirement for the written approval of the Council prior to the commencement of development is therefore embedded in legislation that seeks to protect the integrity and features of the protected sites. The imposition of the condition is therefore necessary where there is any likelihood of the proposed development affecting the protected sites either in isolation or combined with other developments.
9. The Council's ecologist considered information before the Council in respect of the proposal and the potential impact on the SAC. The conclusion was that there was insufficient information to conclude that the proposal would not harm the interest features of the SAC and that further information would be necessary. As such, the condition was imposed to enable the process to conclude prior to commencement of any works on site.

10. In terms of the wording of the condition and the manner in which the process of written approval is triggered, there is limited detail in the condition itself, although that is not to say it is imprecise. As with many conditions which require approval to be provided by the Council, and as explained in the footnotes of the decision itself, the process of seeking approval is a separate application process which requires the applicant to provide information to enable the Council to make an informed decision. However, I have expanded the wording of the condition in the interests of clarity.

Conclusion

11. For the above reasons, the amended condition is necessary and reasonable in order to safeguard protected sites in accordance with the Habitats Regs.

Hollie Nicholls

INSPECTOR