
Appeal Decision

Site visit made on 11 August 2020

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2020

Appeal Ref: APP/X1545/W/20/3252627

The Stables, Witham Road, Langford, Essex CM9 4ST

- 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 Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mrs C Collins against the decision of Maldon District Council.
 - The application Ref COUPA/MAL/19/01326, dated 12 December 2019, was refused by notice dated 6 February 2020.
 - The development proposed is change of use of agricultural building to a dwelling house (Class C3) and associated operational development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have amended the description of the development in order to more accurately reflect the proposed works.

Main Issues

3. The main issues are:
 - whether the proposal constitutes permitted development under Schedule 2, Part 3, Class Q.1. of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO), having particular regard to use; and
 - the effects of the proposal on biodiversity, particularly European protected sites.

Reasons

Permitted development

4. The appeal site is located outside of a defined settlement, within a predominantly rural area and it comprises of three wood cladded buildings surrounded by open land and built around a central yard. The site can be reached via a farm track off Langford Road, which provides access to the appeal site as well as few dispersed farms and agricultural fields.
 5. The present proposal is for the prior approval for a change of use of an agricultural building to a dwelling house, under the provisions of Schedule 2, Part 3, Class Q – agricultural buildings and dwelling houses of the GPDO.
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6. The GDPO states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20th March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.
7. 'Agriculture' as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended) includes, amongst other things, the breeding and keeping of livestock and the use of land as grazing land. However 'the breeding and keeping of livestock' as an agricultural use does not include the breeding and keeping of horses, where the 'keeping of horses' involves activities other than putting them out to graze, as supported by case law in *Belmont Farm v MHLG* [1962] 13 P&CR 417.
8. Although the Council accepts that the building has been under agricultural use for the past sixteen years, it states that the proposed development cannot be considered permitted development under Q.1. as the site was not used, at that date, as part of an established agricultural unit. The Council's view is based on its findings that, as the horses have not been merely grazing on the land, then the use of the land falls outside of the scope of agricultural land, as defined above.
9. The Appellant has provided information which suggests that activities other than putting the horses out to graze, are limited to securing their welfare, such as providing the horses with additional feed, a rug and a well-drained area to lie in. These additional activities appear to be incidental to the main purpose and use of the site and unit, the 'keeping of horses' and grazing, which does constitute agricultural use.
10. Furthermore, during my visit, I did not find any visible signs in the landscape to suggest that the horses are being kept for recreational purpose, such as a round pen or any other kind of equestrian paraphernalia.
11. As such, and in the absence of any evidence to demonstrate that the site and associated paddock have been used for any purpose other than grazing, I find that the site was used solely for agricultural use as part of an established agricultural unit on 20 March 2013.
12. Consequently, I find no conflict with the requirements of Paragraph Q.1(a). The Council has confirmed that the proposal would comply with the other criteria set out within Paragraph Q.1 and I have no reason to conclude otherwise.
13. In addition to establishing the use of the appeal site and of the unit in which it is located on 20 March 2013, in order for the proposal to constitute permitted development under Schedule 2, Part 3, Class Q (b) of the GDPO, the proposed associated operational development must consist of building operations reasonably necessary to convert the building to a dwellinghouse. I also note the Langford & Ulting Parish Council's submission in relation to this issue.
14. The Planning Practice Guidance (the PPG)¹ does state that building works are allowed under Class Q of Part 3 of Schedule 2 of the GDPO but that the right assumes that the agricultural building is capable of functioning as a dwelling and that the right permits building operations which are reasonably necessary

¹ Paragraph: 105 Reference ID: 13-105-20180615: Revision date: 15 06 2018

- to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations.
15. According to the Structural Survey (2019) the proposed works do not involve the construction of new foundations to support the conversion of the existing structure into a dwellinghouse, or any other significant major works, such as substantial demolitions. The works proposed appear to me to fall in line with the advice included in the PPG.
 16. Permission under Class Q is conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval would be required as to the matters set out in Paragraph Q.2(1).
 17. The Applicant does refer to two separate applications for Prior Approval in the Full Statement of Case (2020), both refused by the Council. I am aided by the Appellant's Supporting Information (undated) document which the Council has not objected to.
 18. Having considered the information include in the Supporting Information document and taking also into consideration the response of the Highways Authority, I find that the proposal would make use of existing vehicular access with adequate visibility and there would be no adverse noise impact. Furthermore, the site is located within Flood Zone 1 and is, consequently, unlikely to flood. Risks from contamination are low but unexpected contamination could be addressed by means of a planning condition. The intention is to utilise the majority of the existing structure, with minimal new openings, and external cladding to be replaced where necessary. The proposal would not lead to an increase in the size of the building. The design and external appearance would therefore be similar to the existing and there would be no requirement for any additional structural elements.
 19. In conclusion, the building qualifies for change of use to a dwelling under Class Q and the proposed development does comprise permitted development under the provisions of Schedule 2, Part 3, Class Q – agricultural buildings and dwelling houses of the GPDO as the site has been used solely for an agricultural use as part of an established agricultural unit, in accordance with the Q.1. of the GPDO. For the reasons set above, I find that prior approval is not required for any of the matters set out in paragraph Q.2(1) of the GDPO.

Biodiversity, particularly European protected sites

20. The development falls within the "Zone of Influence" (ZOI) for one or more of the European designated sites part of the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS), with the closest protected site from the appeal being the Blackwater Estuary SPA/RAMSAR. Other sites within the ZOI of the Essex Coast RAMS are the Essex Estuaries SAC, the Hamford Water SAC/SPA/RAMSAR, the Stour and Orwell Estuaries SPA/RAMSAR, the Colne Estuary SPA/RAMSAR, the Dengie SPA/RAMSAR, the Crouch and Roach Estuaries SPA and RAMSAR, the Foulness

Estuary SPA/RAMSAR, the Benfleet and Southend Marshes SPA/RAMSAR, the Thames Estuary and Marshes SPA/RAMSAR.

21. It is anticipated that, without mitigation, new residential development in this area could have a significant effect on the sensitive interest features of these European designated sites, through increased recreational pressure, particularly when considered 'in combination' with other plans and projects. Consequently, an Appropriate Assessment is required. The ultimate purpose of the assessment is to ascertain whether or not the proposal would adversely affect the integrity of the site.
22. The purpose of these designations is to protect internationally important numbers of breeding and non-breeding birds, predominantly waders and wildfowl, their coastal habitats and wetland areas. More specifically, the Blackwater Estuary SPA/RAMSAR qualifies as an internationally important site because it holds approximately 5% of the world population of Dark-bellied Brent Geese and internationally significant numbers of Ringed Plover and Dunlins.
23. The conservation objectives for each European site are similar, in the sense that they focus on ensuring that the integrity of the site is maintained or restored as appropriate and on ensuring that the site contributes to the conservation of its qualifying features.
24. The emerging Essex Coast RAMS aims to deliver the mitigation necessary to avoid significant adverse effects from 'in-combination' impacts of residential development that is anticipated across Essex.
25. The appeal would result in an additional residential dwelling within relative proximity to a SPA/RAMSAR site. Taking into account the conservation objectives for the protected sites, the resulting land use from the appeal and the scale of the development, I agree that recreational effects are a key factor.
26. Consequently, the appeal would constitute a 'Likely Significant Effect' on the integrity of an European protected site, from the appeal proposal alone, as well as in combination with other projects and plans, by reasons of increased recreational visits to the designated area
27. Paragraph 3.(1) of the GDPO does state that permitted development granted under its provisions is subject to the Conservation of Habitats and Species Regulations 2017. These require that permitted development granted under general development orders, made on or after 30th November 2017, which is likely to have a significant effect on a European Site must, according to Regulation 77.(1) (b) be accompanied by a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and; and fee required to be paid. Regulation 77 (7) states that such development may be approved only after the decision maker has ascertained that it will not adversely affect the integrity of the European Site.
28. Despite the appellant indicating that she is willing to provide necessary mitigation, there is no evidence before me to suggest that appropriate mitigation is in place, in accordance with relevant requirements. On that basis, I cannot be confident that the development would not have a detrimental impact on the European sites.

29. Therefore, the proposed development would have an adverse impact on European designated nature conservation sites and, in that respect, be contrary to Policies S1 and I1 of the Maldon District Approved Local Development Plan (2017) and the NPPF.

Conclusion

30. Although I have found that the development does comprise permitted development under the provisions of Schedule 2, Part 3, Class Q – agricultural buildings and dwelling houses of the GPDO, the proposed development would have an adverse impact on an European designated conservation site and, for that matter, I conclude that the appeal should be dismissed.

Andre Pinto

INSPECTOR