



Appeal Decision

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/Y3615/X/20/3263898
8 Blackwell Avenue, Guildford GU2 8LU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs De Speville against the decision of Guildford Borough Council.
- The application Ref 20/P/00996, dated 19 June 2020, was refused by notice dated 25 September 2020.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the change of use from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.

Summary Decision: The appeal is dismissed

Background and Main Issue

1. The change of use of the dwelling from a use within Class C3 (dwellinghouses) to a use within Class C4 (houses in multiple occupation) would normally comprise permitted development under Class L, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, the Council suggest that the change of use would not be lawful until they have granted approval under Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) confirming that the proposed development would not adversely affect the integrity of the Thames Basin Heaths Special Protection Area (TBHSPA).
2. Therefore, the main issue in this appeal is whether the Council's decision to refuse to grant the LDC for this reason was well-founded.

Reasons

3. Article 3(1) of the GPDO states that planning permission is granted for the classes of development described in Schedule 2 of the GPDO, subject to regulations contained within the Habitats Regulations. The Habitats Regulations were replaced in 2017. Paragraph 52, Part 2, Schedule 6 of the Habitats Regulations 2017 amended the wording of the GPDO to refer to regulations 75 to 78 of the Habitats Regulations 2017.

4. Regulations 75 to 78 of the Habitats Regulations impose a general condition on any planning permission granted by a general development order. This relates to development which is likely to have a significant effect on a European site (such as the TBHSPA), either alone or in combination with other plans or projects. Such development must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 of the Habitats Regulations.
5. Regulation 76 provides a means to obtain the opinion of the appropriate nature conservation body. Regulation 77 of the Habitats Regulations sets out the procedure for an application to the local planning authority for approval and, at paragraph (2), for the purposes of its consideration of the application the local planning authority must assume that the development is likely to have a relevant effect. I understand that the appellant submitted an application under this procedure that was subsequently withdrawn.
6. The site is located within 5km of the TBHSPA, the zone of influence, where the Avoidance Strategy sets out that some forms of development would have a significant effect on the integrity of the TBHSPA in combination with other plans or projects.
7. Paragraphs 2.10 and 2.14-2.15 of the TBHSPA Avoidance Strategy 2017 Supplementary Planning Document (the Avoidance Strategy) suggest development that can have a significant effect on the integrity of the TBHSPA include houses in multiple occupation. In this case, the proposal would contain six bedrooms and the Avoidance Strategy makes a clear assumption that this would accommodate an additional person beyond the numbers in an equivalent dwellinghouse. These assumptions are not backed up by evidence as the Avoidance Strategy states that occupancy data for homes larger than five bedrooms is not available. However, taking into account the precautionary principle, it is not an unreasonable assumption and no evidence has been presented to dispute it. I understand that Natural England agreed the Avoidance Strategy prior to adoption. On that basis, the Avoidance Strategy assumes there is likely to be a significant effect in combination with other plans or projects.
8. My attention has been drawn to paragraph 3.1 of the Avoidance Strategy which sets out that a net increase in residential dwellings within the zone of influence would avoid the effects if they were to make a contribution toward the provision of specified measures. This would mean an appropriate assessment would not be required for this form of development. However, how this relates to the change of use of a dwellinghouse to a house in multiple occupation, as proposed.
9. I understand that neighbouring local planning authorities take a different approach and the Council's approach differs from an earlier Avoidance Strategy. I need to consider the appeal on the individual merits of this case, including the latest guidance prepared for the specific circumstances of this Council.
10. Taking all the above into account, I consider it is likely that there would be a significant effect on the TBHSPA, either alone or in combination with other plans or projects, such that approval is required under regulation 77 of the Habitats Regulations. As no approval has been given under that regulation, the change of use of the property from use class C3 (dwellinghouses) to use class

C4 (houses in multiple occupation) cannot comply with the requirements of article 3(1) of the GPDO. Consequently, such a change of use cannot be lawful.

11. For these reasons, I conclude that the Council's decision to refuse to grant the LDC was well-founded.

Formal Decision

12. The appeal is dismissed.

AJ Steen

INSPECTOR