



Appeal Decision

Site visit made on 10 January 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/D3505/W/22/3295745

Frog Hall Farm, The Street, Aldham IP7 6NH

- 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 Mr Jewers against the decision of Babergh District Council.
 - The application Ref DC/21/06571, dated 15 November 2021, was refused by notice dated 28 January 2022.
 - The development proposed is the conversion of an agricultural storage barn into a dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Babergh District Council against Mr Jewers. Also, an application for costs was made by Mr Jewers against Babergh District Council. These applications are the subject of a separate decision.

Procedural Matters

3. I have taken the description of development in the banner heading above from the appellant's Planning Statement and appeal form, as the planning application form did not contain a description of development; it simply referenced the Planning Statement. I have therefore determined the appeal on this basis.
4. The appeal site is located within the Zone of Influence of the Stour and Orwell Estuaries Special Protection Area and Ramsar site, which is afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended ('the Habitats Regulations'). The appeal proposal would result in the net increase of one dwelling. However, as I am dismissing the appeal, I do not need to consider this matter further, as it could not lead me to a different conclusion.

Main Issue

5. It is common ground that the appeal scheme meets the requirements of paragraph Q.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO') such that it would constitute development permitted under Class Q, subject to the prior approval of certain matters. For permitted development under Class Q(a), namely a change of use from an agricultural building to a Class C3 dwellinghouse, prior approval is required in respect of a number of matters listed at Q.2 (1) of the GPDO.

6. The Council's issue was with regard to the potential effect on protected species and in the context of location or siting of the building (Q.2(1)(e)) and therefore, the main issue is 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, with particular reference to its effect on protected species.

Reasons

7. The appeal site comprises a disused agricultural building constructed of a concrete frame infilled with brick with a corrugated roof, and a small area of land surrounding the building. Attached to the building are open-sided modern agricultural buildings. Surrounding the appeal site is a former barn that has been converted into a dwelling, an L-shaped former agricultural building, and the former farmhouse. Agricultural fields surround this small cluster of buildings.
8. Ponds are located within 100m of the appeal site and the Council's Ecological Consultant is aware of records of Great Crested Newts (GCNs) in the immediate vicinity of the appeal site and these ponds. The Council's Ecological Consultant identified the premises could contain features which could be used by roosting bats and I noted these on my site visit.
9. Paragraph Q.2 (1) of the GPDO does not explicitly refer to the effect of a proposal upon protected species. However, it does, at Q.2(1)(e) require consideration of whether the location or siting of a building makes it otherwise impractical or undesirable to create a dwellinghouse. Moreover, Regulation 9 of the Habitats Regulations states that "the competent authority must exercise their functions which are relevant to nature conservation...so as to secure compliance with the requirements of the Directives". Furthermore, Section 40 of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') requires every public authority to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Accordingly, European Protected Species must be taken into account when making decisions relating to any planning functions, including prior approval applications.
10. No Preliminary Ecological Appraisal (PEA) was submitted with the planning application to consider the effect of the proposal on European Protected Species, nor subsequently when the appeal was first lodged. Instead, the appellant submitted a PEA (Ref: 1724 Rev A) with their final comments. The submission of the PEA at the final comments stage has meant that interested parties have not had the opportunity to consider the PEA and could be prejudiced if the PEA was accepted. Therefore, I must determine the appeal on the basis of the information considered by the Council at the time of its determination.
11. As the necessary PEA cannot be accepted, I cannot be satisfied that the development would not have a material adverse impact on protected species (bats and GCNs). Therefore, there is a lack of evidence before me to ensure the safeguarding of protected species, which would not be in accordance with the requirements of the Habitats Regulations, or Section 40 of the 2006 Act.

12. In reference to the main issue, the location and siting of the building make it undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of Schedule 2 to the Use Classes Order, with particular reference to its effect on protected species. The proposal would also be contrary to the National Planning Policy Framework which seeks to conserve and enhance the natural environment.

Other Matters

13. I have been directed by the appellant, in their final comments, that since the Council refused the appeal proposal, they have submitted two revised Class Q prior approval applications¹ for the appeal site, both of which included a PEA. The first application was subsequently refused, with the reason for refusal stating that insufficient ecological information was provided in the form of a further bat activity survey. At the time of the appellant's writing, the Council had not determined the second application. Therefore, I attach limited weight to these applications. Even if the second application could be considered a genuine fallback option, I have declined to accept the PEA, and therefore I do not have the information before me and cannot therefore fully assess the impact of this proposal on European Protected Species or condition any required mitigation measures.
14. I am mindful of the appellant's difficulties in communicating with the Council. However, this has no bearing on my consideration of the proposed development.

Conclusion

15. For the reasons detailed above, the proposed development would not comply with one of the matters detailed at Q.2 (1) of the GPDO and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. Consequently, the proposed development does not benefit from deemed permission under Class Q of the GPDO. I conclude that the appeal is dismissed.

A Berry

INSPECTOR

¹ Planning Refs: DC/22/02160 and DC/22/03636