



Appeal Decision

Site visit made on 27 June 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2023

Appeal Ref: APP/V2255/W/22/3303164

Bells Forstal Farm, Throwley Road, Throwley ME13 0JS

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr & Mrs R Scutt against the decision of Swale Borough Council.
 - The application Ref 21/506896/PNR, dated 20 December 2021, was refused by notice dated 7 March 2022.
 - The development proposed is Change of use of 1no. Building and land within its curtilage from a use as agricultural to a flexible use falling within a Mixed Class B8 (Storage) and B1 (Light Industrial).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Use Class B1 (Light Industrial), as stated in the appellants' description of development was amongst the use classes removed by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (SI 2020 No.757). Class B1 (Light Industrial) is now effectively Class E(g)(i) within the Town and Country Planning (Use Classes) Order 1987 (as amended). I have determined the appeal on this basis, and I am satisfied that doing so would not prejudice the interests of any party.
3. In having regard to the judgement in *Dunoon Developments Ltd v SSE & Poole BC* [1993] 65 P&CR (page 101), the Council has withdrawn its first reason for refusal in respect of the proposed change of use being contrary to condition 2 of the planning permission (ref. 20/503357/FULL) granted for the agricultural building the subject of this appeal. Based on the evidence before me, I have no reason to disagree with the Council's conclusion on this matter.

Main Issues

4. The main issues are:
 - Whether or not the proposed development would constitute permitted development in respect of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), and;
 - If the proposal is permitted development, whether prior approval is required as to: (i) transport and highways impacts of the development;

(ii) noise impacts of the development; (iii) contamination risks on the site; and (iv) flooding risks on the site.

Reasons

Whether the proposal would be permitted development

5. Schedule 2, Part 3, Paragraph W(3) of the GPDO, enables a local planning authority to refuse an application for prior approval where the proposal does not comply with any conditions, limitations or restrictions specific in this Part and being applicable to the development in question.
6. Schedule 2, Part 3, Class R of the GPDO grants planning permission for the change of use of a building and any land within its curtilage from an agricultural use to a flexible use falling within one (my emphasis) of the Use Classes listed.
7. The use of the word 'or' between the list of Use Classes in Schedule 2, Part 3, Class R of the GPDO, emphasises that the grant of planning permission permits the change of use of an agricultural building to one of those uses in the list.
8. Furthermore, Paragraph R.4. of Schedule 2, Part 3, Class R of the GPDO, which aids interpretation, states that a flexible use means use of any building or land for a use (singular) falling with the list of uses set out in Class R.
9. It follows that the appeal proposal, which proposes to change the use of the same area of floor space within the building from an agricultural use to a mixed use of more than one of the Use Classes listed in Schedule 2, Part 3, Class R of the GPDO, would not be development permitted by the GPDO.
10. I note the appellants' desire for flexibility to allow for either a storage or light industrial use of the building to come forwards. Schedule 2, Part 3, Class R of the GPDO, allows a change of use between any use in the list of flexible uses subject to specific conditions, limitations and restrictions. However, Schedule 2, Part 3, Class R of the GPDO does not permit a mixed use of the same floor space within a building.

Whether prior approval is required

11. Having found that the proposal would not be permitted development, it is not necessary for me to consider the prior approval matters within paragraph R.3 (1)(b) of Schedule 2, Part 3, Class R of the GPDO, as it would not alter the outcome of the appeal.

Conclusion

12. For the reasons given and based upon the evidence before me, I conclude that it has not been demonstrated that the proposal is permitted development under Article 3(1) and Schedule 2, Part 3, Class R of the GPDO. The appeal is therefore dismissed.

G Sylvester

INSPECTOR