



Appeal Decision

Site visit made on 3 October 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2023

Appeal Ref: APP/D3505/W/22/3312776

Lafham Hall Estate, Lafham Hall, Pond Hall Road, Hadleigh IP7 5PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by JJ Hartman Homes against the decision of Babergh District Council.
 - The application Ref DC/22/01085, dated 11 February 2022, was refused by notice dated 9 June 2022.
 - The development proposed is Application to determine if Prior Approval is required for a proposed: Change of Use of Agricultural Buildings to Dwellinghouses (C3) and for building operations reasonably necessary for conversion. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q - Conversion of a Barn into 2no. dwellings.
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Decision

1. The appeal is allowed and prior approval is granted for conversion of a barn into 2no. dwellings and for building operations reasonably necessary for conversion at Lafham Hall Estate, Lafham Hall, Pond Hall Road, Hadleigh IP7 5PP in accordance with the terms of the application, Ref DC/22/01085, dated 11 February 2022, and the plans submitted with it, PA_01, PA_03 and PA_05 Rev B, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the mitigation and enhancement works set out in the Ecology Report (MHE Consulting Ltd, June 2021).

Applications for costs

2. An application for costs has been made by JJ Hartman Homes against Babergh District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposed development in the banner heading above is taken from the appeal form as it more accurately described the development than that on the application form. However, I have removed superfluous wording in the decision and amended the ordering in the interests of clarity.
4. The site lies within the zone of influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site. The Council has confirmed it has received a contribution towards the Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) and as such no longer wishes to defend the second reason for refusal. I will return to this matter.

Main Issue

5. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), having regard to the requirements of paragraph Q.2(1)(e) as to whether the location or siting of the buildings make it otherwise impractical or undesirable for the buildings to change from agricultural use to a use falling within Class C3 (dwellinghouses).

Reasons

6. The Planning Practice Guidance (PPG)¹ states that 'impractical or undesirable' are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would 'not be sensible or realistic', and undesirable reflects that it would be 'harmful or objectionable'.
7. The application site overlaps with a planning permission² for, among other works, conversion of an existing building to a dwelling and the construction of related annexes. The appeal proposal would prevent the playroom/bedroom wing from being constructed. However, there still would be three bedrooms available to the permitted scheme. The various aspects of it are readily severable and there is no automatic requirement to complete a development. Consequently, I consider both schemes could be implemented. In reaching this conclusion, I have had regard to the appellant's arguments in relation to the Pilkington³ and Hillside Parks⁴ cases with respect to conflicting permissions. However, as highlighted by the Council, the Supreme Court has since issued its ruling⁵ on Hillside Parks, and it is that decision that has informed my conclusion.
8. The Council identify there would be 15m between both schemes but only highlight a generic concern regarding residential amenity. There would not be direct overlooking to the curtilage of the appeal proposal. Furthermore, overlooking from the first floor elements of the extant permission would be limited due to the windows serving dressing rooms and en-suites. The dwelling approved by the planning permission is arranged around a central courtyard which appears to show a private garden space. I have not been made aware of any controls that require the site the subject of this appeal to be retained as part of the garden space of the permission. Both proposals therefore provide for an acceptable level of outdoor amenity space. The relationship between the properties would not result in adverse living conditions for future occupiers of either property such that it would be impractical or undesirable for the proposed conversion to be carried out.
9. There is no evidence before me to demonstrate why the partial implementation of the previous permission would be harmful for heritage or design reasons, nor did I observe anything at my site visit that would lead me to such a conclusion.

¹ When is permission required Paragraph: 109 Reference ID: 13-109-20150305 Revision date: 05 03 2015

² DC/21/02860

³ Pilkington v Secretary of State for the Environment [1973] 1 WLR 1527

⁴ Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440

⁵ Hillside Parks v Snowdonia National Park [2022] UKSC 30

10. I therefore conclude there is no reason that it would be otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) and the proposed development would comply with the condition set out at paragraph Q.2(1)(e), Part 3, Class Q of Schedule 2 of the GPDO.

Conditions

11. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class Q is subject to the condition that it must be completed within a period of 3 years starting with the prior approval date. It is therefore not necessary for me to attach a time limit condition. As there is no ambiguity in terms of the plans which are before me a condition requiring compliance with the approved plans is also unnecessary.
12. The ecology report submitted with the application confirms the presence of bats within the barn and proposes mitigation measures, along with enhancements. It is reasonable and necessary to secure these measures via a condition. However, it is not necessary for the Council to be provided with a copy of any licences granted by Natural England as those matters are controlled by separate legislation.
13. The grant of planning permission under Article 3(1) is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition where the development would affect a European protected habitat such as the SPA. This includes a separate application to the Local Planning Authority under regulation 77 of the Habitats Regulations. The Council has confirmed it has received a payment in accordance with the RAMS, however it has not confirmed if a regulation 77 application has been approved. However, as this application can be submitted after the grant of prior approval, it is not determinative and therefore I do not need to consider this matter further as part of this appeal.

Conclusion

14. For the reasons given above, the appeal is allowed and prior approval is granted.

J Downs

INSPECTOR