

Appeal Decision

Site visit made on 9 September 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2024

Appeal Ref: APP/K1128/W/24/3337369

**Agricultural Building, New Park Road, Smithaleigh, Sparkwell, Lee Mill,
South Hams, Devon PL7 5FD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr S Winzer against the decision of South Hams District Council.
 - The application Ref is 3621/23/PDM.
 - The development proposed is change of use of existing agricultural building into 3 'larger' dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the banner heading above from the application form. However as 'please see Planning Statement for further information.' is not an act of development, I have removed this element.
3. The appellant has submitted additional information as part of their appeal in the form of an updated Bat & Protected Species Survey¹ (UBPSS). The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a substantial difference' or a 'fundamental change' to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.

¹ ref: 220517 rev03

5. In this instance, the additional information provides an update on ecological matters. I do not consider that the amendments would lead to the scheme being substantially different to that considered at the application stage.
6. However, the Council state that they have not received the UBPSS for comment and furthermore, an interested party also refers to matters pertinent to ecology. Whilst a copy of the UBPSS was also included with the appellant's final comments, the Council and interested parties have not had the opportunity to make any representations that, given the nature of the additional information, they may have wanted to make on the proposal. In these circumstances my consideration of the UBPSS would cause injustice to the Council and interested parties and as such I have considered the appeal on the information that was before the Council at the time of its determination.
7. A signed Unilateral Undertaking (UU) pursuant to Section 106 also accompanies the appeal documentation which seeks to secure mitigation for additional recreational pressures upon the Tamar European Marine Site (comprising the Plymouth Sound and Estuaries Special Area of Conservation and Tamar Estuaries Complex Special Protection Area) (EMS). I will return to this later in my decision.
8. On 21 May 2024, Statutory Instrument 2024 No 579 came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the General Permitted Development Order (GPDO). Due to the transitional arrangements, I have proceeded to determine the appeal in accordance with the GPDO provisions that were in force at the time the original application was submitted in October 2023. All references to the GPDO in this decision therefore relate to the version that was in force at that time.

Background and Main Issues

9. Class Q(a) of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses), and under Class Q(b), building operations reasonably necessary to convert the building for that purpose.
10. There is no dispute that the proposal would be permitted development taking into account the limitations in paragraph Q.1 of the GPDO. For permitted development under Class Q (a) and (b), paragraph Q.2(1) of the GPDO requires prior approval of certain matters. These include at (e) 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); and (f) the design or external appearance of the building.
11. Having regard to the above and the Council's reasons for refusal of prior approval, the main issues in this appeal are:
 - whether the location or siting of the building makes it otherwise impractical or undesirable with particular regard to protected species; and
 - the design or external appearance of the building.

Reasons

Protected species

12. Protected species are not specifically referred to in the GPDO. However, paragraph Q.2(1) of the GPDO does 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 Conservation of Habitats and Species Regulations 2017 (habitat regulations) imposes a duty to consider relevant Directives and whether there is a reasonable likelihood of protected species being present and affected by a proposal. This applies equally to prior approval applications for proposals that are said to be permitted development.
13. The Council has raised ecological concerns as a reason for refusal on the basis that the appeal building may contain features that make it suitable for use by wildlife. Although a Bat and Species Survey² (BSS) was before the Council when determining the application, this survey was around 17 months old at the point of determination. Within the BSS it is stated that the information provided within the report must be reviewed and updated in the time following twelve months from the date of the survey.
14. Furthermore, whilst I am informed that CIEEM guidance states that an ecology survey could still be valid for up to 18 months, this is subject to exceptions including where a site may offer existing or new features which could be utilised by a mobile species within a short timeframe.
15. Given the character of the building as an agricultural barn and by reason of its location within the countryside, the appeal building would, in my view, have the potential to offer suitable habitat for protected species such as bats. Moreover, an interested party also refers to birds nesting in the building and roost all year round.
16. Even if the site's circumstances have not changed, given the date of the BSS I cannot be sure that there would be no adverse effect on protected species or habitats at the appeal site. Consequently, it has not been adequately demonstrated that it is practical or desirable for the building to change use to a residential use, contrary to Q2.(e), Class Q, Part 3, Schedule 2 of the GPDO, or that there is not a reasonable likelihood of Protected Species being present and affected by the proposal in accordance with the habitat regulations.

Design or external appearance

17. The National Planning Policy Framework (Framework) seeks to achieve well-designed and beautiful places. Amongst other things, it seeks to ensure developments are visually attractive as a result of good architecture, are sympathetic to local character, including the surrounding built environment and landscape setting, and maintain a strong sense of place.
18. The appeal building is a modern agricultural building of functional scale and design which, due to its simple form of a pitch roof and timber weather board and block work elevations has a utilitarian appearance and agricultural character.

² Ref: 220517 rev01

19. The conversion would introduce new window and door openings that would inevitably change the external appearance of the building. Due to regularly spaced windows and doors of domestic scale and appearance, the proposal would result in the domestication of the building.
20. However, the overall simple built form of the building would remain as would external facing materials that match the existing. This would result, notwithstanding the introduction of windows and doors, in the proposal maintaining an appearance of a converted modern agricultural building, being sensitive to its form and integrity. As such the agricultural origins of the building would still be apparent.
21. Moreover, both Smithaleigh and Lee Mill Bridge are reasonably near to the appeal site, where I observed a number of residential buildings of domestic character. Furthermore, the wider area is not a wholly undeveloped landscape and also consists of sporadic development some of which is of residential scale and appearance. As such, the proposal would be experienced within the context of the development in the wider area and would not appear as particularly incongruous or out of character, maintaining the sense of place of the wider surrounding area.
22. To conclude on this main issue, the proposed design or external appearance of the proposal would be acceptable. It would represent a well-designed, good quality form of development that would accord with the provisions of the Framework, as previously cited above.

Other Matters

23. The appeal site lies within the 12.3km Zone of Influence of the EMS. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75-78 of the habitats regulations. Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the Order and would affect a European protected habitat. Permitted development cannot be lawfully begun until the developer has made a Regulation 77 application and the Council is satisfied that the development would have no adverse effect on the integrity of the habitat.
24. Neither the GPDO, nor Regulations 75-78 prescribes the sequencing of prior approval and Regulation 77 applications. The requirements of both procedures must be met before the development can be lawfully begun, but it is not the case that the appellant must have written notification of a Regulation 77 approval before seeking prior approval, or vice versa.
25. Therefore, while I note the submission of the UU, a Regulation 77 application would have been a matter for the main parties to address outside of this appeal before the development starts if this appeal were to have been successful.
26. I note the appellant's comments about the Council's handling of the application and their frustrations given the history of previous applications at the appeal site. However, this has little to do with the planning merits of the case, which I have considered on the basis of the evidence before me and a recent site visit.

Conclusion

27. For the reasons given above the appeal is dismissed.

S Harrington

INSPECTOR