



Appeal Decision

Site visit made on 4 January 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th January 2022

Appeal A: Ref: APP/V2255/W/21/3272347

Churchmans Farm, Stalisfield Road, Ospringe ME13 0HA

- 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 PA of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr & Mrs A Bruce against the decision of Swale Borough Council.
 - The application Ref 20/503542/PNPA, dated 3 August 2020, was refused by notice dated 1 October 2020.
 - The development proposed is described as Change of Use of Building and Land within their curtilage from a use falling within B1 (C) (Light Industrial) of the Schedule to a Use Falling within Class C3 (as One Dwellinghouse). Renewal of Prior Approval consent 18/503568/PNPA.
-

Appeal B: Ref: APP/V2255/W/21/3272387

Churchmans Farm, Stalisfield Road, Ospringe ME13 0HA

- 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 PA of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr & Mrs A Bruce against the decision of Swale Borough Council.
 - The application Ref 20/503545/PNPA, dated 3 August 2020, was refused by notice dated 1 October 2020.
 - The development proposed is described as Change of Use of Building and Land within their curtilage from a use falling within B1 (C) (Light Industrial) of the Schedule to a Use Falling within Class C3 (as One Dwellinghouse). Renewal of Prior Approval consent 18/503568/PNPA.
-

Decisions

1. Appeal A is dismissed, and Appeal B is dismissed.

Procedural Matters & Background

2. Each of these appeals relate to separate proposals for the change of use of respective premises to residential dwellinghouses in close proximity to one and other. The Council's reasons for refusing the applications, the appellant's grounds of appeal, and the circumstances surrounding each proposal all raise the similar issues for my consideration. Therefore, while I have considered each appeal on its own merits, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Appeal Decision APP/V2255/W/21/3272347 and APP/V2255/W/21/3272387

3. The Council's decision notice explains the applications for prior approval were refused because the buildings have no existing windows to provide adequate natural light to all habitable rooms contrary to PA.2 (v) of Class PA of Part 3 of the Town & Country (General Permitted Development) Order 2015 (as amended) (the GPDO). Furthermore, that Class PA does not allow for external works as part of the prior approval process.
4. Paragraph PA.1.c) of Class PA of the GPDO states development is not permitted by Class PA if —the prior approval date falls on or after 1st October 2020. I have given the Council and the Appellant the opportunity to comment upon the implications of this and any changes to the GPDO since the applications were refused, for their respective cases and taken these views into account in determining the appeals.

Main Issue

5. The main issue for appeal A and appeal B is whether the proposed developments are permitted development.

Reasons

6. Paragraph PA.1c) of Class PA states development is not permitted by Class PA if the prior approval date falls on or after 1st October 2020. Section 78 of the Town and Country Planning Act 1990 (as Amended) is primary legislation allowing the right to lodge an appeal within 6 months of the refusal of a prior approval. However, I have not been provided with any substantive evidence of or mechanism by which, the right under section 78 amends the date limitation under Class PA of the GPDO.
7. These applications might follow the grant of two previous prior approvals at the respective buildings in August 2018 for a change of use to dwellinghouses. However, these decisions are over three years old. There is no substantive evidence of a renewal or other mechanism, or other provisions the GPDO, that would permit me to allow these appeals under Class PA after the date limitation set out, and therefore in contravention of paragraph PA.1(c). Therefore, I have no choice but to dismiss these appeals.

Other Matters

8. I understand there is an extant planning permission for the insertion of windows into each building to allow sufficient natural light into the dwellings, as these openings cannot be permitted under Class PA. The full details and circumstances of prior approval Ref.20/01001/AS are not before me, so I cannot make a reasoned comparison between that and these appeal proposals. In relation to appeal proposals A and B, there appears to be no mechanism before me such as a planning obligation, to ensure all approved windows are constructed to ensure adequate natural light in compliance with PA.2(v) and W2.A of the GPDO, before any use permitted under Part 3 is commenced. However, as the appeals fail for other reasons, this is not a determinative issue and I have not considered the matter further.
9. Article 3(1) of the GPDO grants permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75 – 78 of the Conservation of Habitats and Species Regulations 2017 (as Amended) (the Regulations). I am informed by the Council that the appeal sites are within the 0-6km Zone of Influence of the Swale Special Protection Area and

Appeal Decision APP/V2255/W/21/3272347 and APP/V2255/W/21/3272387

would have likely significant effects on it as a result of recreational disturbance. Regulation 75 of the Regulations states it is a condition of any permission granted by a general development order, that developments likely to have a significant effect on the SPA must not begin until the developer has received written notification of the approval of the Local Planning Authority under Regulation 77. As the appeals fail for other reasons, I have not investigated this matter further.

10. The appeal sites are within the setting of the 16th century Churchmans Farm, which I am informed is a Listed Building. Special regard should be given to the desirability of preserving the setting of Listed Buildings under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, as I am not allowing these appeals, I have considered the matter further.

Conclusion

11. For the reasons set out above the appeals do not succeed.

Dan Szymanski

INSPECTOR