
Appeal Decision

Site visit made on 20 September 2016

by J C Clarke BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 November 2016

Appeal Ref: APP/J1915/W/16/3152203

Livestock and agricultural, Edwards Green Farm, Brickendon, Hertford, Herts SG13 8NT

- 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.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Ray Peters against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/0450/ARPN, dated 23 February 2016, was refused by notice dated 13 April 2016.
 - The development proposed is described as 'Change of use of agricultural building to dwellinghouse'.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, paragraph Q.2 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) for a change of use of agricultural building to dwellinghouse at land at Livestock and agricultural, Edwards Green Farm, Brickendon, Hertford, Herts SG13 8NT in accordance with the terms of the application Ref 3/16/0450/ARPN, dated 23 February 2016, and the plans submitted with it.

Application for costs

2. An application for costs was made by Mr Ray Peters against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Under Class Q of Schedule 2, Part 3 of the GPDO ('Class Q'), the change of use and conversion of an agricultural building and land within its curtilage to a single dwellinghouse is excluded from being 'permitted development' if one or more of the circumstances in paragraph Q.1(a) to Q.1(m) inclusive apply. According to the evidence which is before me, none of these circumstances apply to the proposal which is subject to appeal. This means that it can, in principle, constitute 'permitted development' subject to satisfying the prior approval procedures set out in paragraph Q.2 of Schedule 2.
 4. The Council's decision notice refers to the appeal proposal as being for a '*...change of use...*' of the building subject to appeal to a dwellinghouse. It is, however, clear from the submitted drawings and supporting information that
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the proposal also includes building operations which would be carried out to convert the building to this new use. I have therefore treated the appeal proposal as being for development which would fall within both Class Q(a) and Class Q(b).

5. My decision uses the description of development in the Appellant's information submitted with the application as it was not set out in the application form itself.
6. The prior approval application subject to appeal was submitted under the provisions of paragraph Q.2 of Schedule 2. Of the provisions set out in this paragraph the Council's reason for refusal only relates to those set out in paragraph Q.2(1)(e), which states '*...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...*'. The Council has not raised any concerns regarding transport and highway matters, noise impacts, contamination risks, flooding or the design or external appearance of the building. Paragraph Q.2(e) therefore forms the basis of my main issue.

Main Issue

7. The main issue is whether the location or siting of the building subject to appeal makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwelling.

Reasons

8. The basis of the Council's refusal of prior approval is that the proposal would result in a dwelling in an isolated location away from key services and infrastructure such as public transport, schools and shops, and the occupiers of the dwelling would be dependent on transport by private motor vehicle to access services or infrastructure.
9. In this context, I agree that the site is outside any existing settlement and the nearest village, just under 1 mile away at Brickendon, has very limited facilities. The nearest train station and primary school are further away and it is likely that occupiers of the proposed dwelling would be reliant on the private car to gain access to shops and other services.
10. Set against this point, however, the Planning Practice Guidance (PPG) confirms, in relation to the Class Q permitted development rights, that '*...The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs...*¹.'
11. The PPG goes on to confirm that '*...When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would*

¹ Paragraph: 108 Reference ID: 13-108-20150305

not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval...'².

12. The building subject to appeal is located on the edge of the farm yard within the Appellant's land holding, and forms part of a group of buildings which also includes 2 dwellings, other farm buildings and a building which was being converted at the time of my site visit to a dwelling under prior approval reference 3/15/1854/ARPN. This location has good road access and readily available sources of power and other utility services. Whilst at the time of my site visit operational farm activities were taking place in the adjacent farm yard, the building is not unduly close to any poultry or other livestock buildings, silage storage or buildings in which to my knowledge dangerous chemicals are stored. Due to its location within an established group of buildings the proposal would not have a harmful 'urbanising' effect as claimed by the Council and its location is not one which I find to be impractical or undesirable for residential use in the terms set out in the PPG.
13. The Council has referred to paragraph W.10 of Part 3 of the GPDO, which requires it, when determining an application under Class Q, to have regard to the National Planning Policy Framework (the 'Framework') so far as relevant to the subject matter of the prior approval, as if the application were a planning application. In this context, however, the PPG specifically advises against applying a 'sustainability of location' test such as that undertaken by the Council in this case. Whilst the PPG is not a statutory instrument it sets out the Government's current and up-to-date guidance concerning the GPDO, and must therefore be given substantial weight.
14. Whilst the Council states that the Government did not 'clarify' the terms of the GPDO when it was amended in April 2015, the PPG provides adequately clear advice concerning the correct approach to apply. Whilst the interpretation of the GPDO is a matter for the courts, and the Council has stated that it intends to challenge the approach set out in the PPG, there is no case law in place which indicates that the approach in the PPG should not be followed. Although the Council has referred to legal advice that it has received, the extract that I have seen of this appears (from its paragraph numbering) to be incomplete and I can accordingly only give it limited weight.
15. I also consider that the relationship between the GPDO, PPG and the economic, social and environmental dimensions of sustainability set out in the Framework is more subtle than that implied by the Council. The Class Q provisions support the objective, set out in the Framework, of boosting the nation's supply of housing but it is hard to see how they would do this if they did not result in housing being delivered in sites where it would not otherwise be accepted.
16. In addition, the Council's stance that the location of the building subject to appeal makes it undesirable in principle for conversion to residential use is hard to reconcile with paragraph 55, bullet point 3 of the Framework under which, if the building were to become redundant an appropriately designed scheme for its conversion to housing could be acceptable without any test of 'sustainability of location' being applied. I do not consider that the requirements of paragraph W.10 of the GPDO materially reduce the substantial weight that must be given to the PPG.

² Paragraph: 109 Reference ID: 13-109-20150305

17. The Appellant has drawn attention to several appeal decisions in which Inspectors have allowed appeals where the relevant local authority has, as in this case, in effect applied a 'sustainability of location' test in Class Q prior approval cases. Whilst I have considered the case before me on its own merits I can see no reason to follow a different approach to these other Inspectors in relation to the question of 'sustainability of location'. I also note that the Council did not resist the earlier application for the residential conversion of the building subject to appeal (application 3/15/2571/ARPN) for any reason related to its location. It also did not resist the residential conversion of the building which is across the farm yard from the appeal building on such grounds.
18. Having regard to the advice in the PPG and the other factors set out above, I do not consider that the location or siting of the building subject to appeal are such as to make it either impractical or undesirable for it to change from agricultural use to a dwelling.

Conditions

19. The Appellant should note that, under paragraph Q.2(3) of Schedule 2, Part 3 to the GPDO, the granting of prior approval is subject to the condition that the change of use and building operations must be completed within a period of 3 years starting with the prior approval date. Paragraph W(12) requires that the development must be carried out in accordance with the approved details, which in this case include the application form, the Appellant's supporting information received by the Council on 23 February 2016, drawing numbers EGF/2/1 and EGF/2/2 and the submitted A4 size location plan.
20. Under paragraph W(13) of Schedule 2, Part 3 of the GPDO, additional conditions may be imposed provided that they are reasonably related to the subject matter of the prior approval. The Council has not requested that any additional conditions be imposed in this case and no such conditions were imposed upon prior approval 3/15/1854/ARPN which allowed the building which is immediately across the farmyard from the building subject to appeal to be converted to a dwelling. There is no evidence before me which convinces me that a different approach is needed in the current case.

Conclusions

21. I have found that the location or siting of the building subject to appeal do not make it impractical or undesirable for it to change from agricultural use to a dwelling. I therefore allow the appeal.

Jonathan Clarke

INSPECTOR