
Appeal Decision

Site visit made on 5 December 2016

by Veronica Bond LLB (Hons), Solicitor (non-practising)

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

Decision date: 28 December 2016

Appeal Ref: APP/Y1138/W/16/3157746

Thorne Farm, Coleford Hill, Stoodleigh, Tiverton, Devon EX16 9QG

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Miss Katherine Hawke (nee Mead) against the decision of Mid Devon District Council.
 - The application Ref 16/00790/PNCOU, dated 26 May 2016, was refused by notice dated 25 July 2016.
 - The development proposed is change of use of agricultural building to 3 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have taken the description of development in my banner heading above from the Council's decision notice as I consider that this succinctly describes what is proposed. The application form refers to the appellant as 'Miss K Hawke' but it was confirmed at the site visit that the appellant's correct title is Mrs K Hawke.

Background and Main Issues

4. Schedule 2, Part 3, Class Q of the Order states that a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwelling houses), together with the building operations reasonably necessary to convert the building, is permitted development.
5. Exclusions are listed in paragraph Q.1 and the Council has not indicated that any of the exclusions detailed at (b) to (h), nor at (j) to (m) would apply. The Council contends though that the exclusion at Q.1 (a) – essentially that the site was not used solely for an agricultural use, as part of an established agricultural unit either on 20 March 2013, or if the site was not in use on that date, when it was last in use.
6. The Council also takes the view that the exclusion at Q.1(i) would apply being that the development would consist of building operations other than (i) the

installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services – to the extent reasonably necessary for the building to function as a dwelling house; and (ii) partial demolition to the extent reasonably necessary to carry out the building operations allowed. I deal with each of these potential exclusions in turn below.

7. The permitted development rights in Class Q are also subject to conditions detailed in paragraph Q.2. This paragraph requires the developer to apply to the local planning authority for a determination as to whether prior approval is required in relation to: (a) transport and highways impacts of the development; (b) noise impacts of the development; (c) contamination risks on the site; (d) flooding risks on the site; (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to use as a dwelling house; (f) the design and external appearance of the building. The Council considers that the impacts relating to the matters at (e) would not be acceptable.
8. Accordingly, the main issues are:
 - whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Order; and
 - if so, whether the location or siting of the building makes it otherwise undesirable or impractical for the building to change from an agricultural use to use as dwelling houses, with regard to living conditions for future occupants of the dwelling houses in respect of odour and noise and disturbance.

Reasons

Agricultural use

9. It appears that the land holding within the appellant's ownership is currently used for mixed agricultural and equestrian purposes as a racing stud stables. Although there were a large number of horses on site and signage indicating an equestrian business, there were also sheep grazing in the fields and agricultural equipment visible. I therefore find that the appeal site was part of an established agricultural unit on 20 March 2013.
10. Class Q also requires that the appeal site itself was used solely for an agricultural use either on 20 March 2013, or if not in use on that date, when last in use. I have considered that there is some evidence that the part of the appeal building has been used for the stabling of ponies in the past and also for the storage of domestic paraphernalia. I note also some limited works carried out pursuant to a previous application for a holiday accommodation use. However, the appellant's statutory declaration confirms that the stabling was a temporary measure to house her children's ponies pending appropriate accommodation being created. The appellant has confirmed that historically the site has been used for agricultural purposes including the storage of cattle crushes and that this represents the last material use made of the site.
11. Given the temporary nature of the stabling and its connection to the needs of the household of the adjacent farm house, I do not consider that this represented a material change of use. The storage of a small number of domestic items equally does not in my view alter the nature of the use. Works relating to the holiday accommodation permission are not substantial enough

to indicate an intervening use. Accordingly, I find that on the evidence before me, the site has not been in a mixed use but was solely in an agricultural use either on 20 March 2013 or when last in use. I therefore find that the exclusion at Q.1(a) of the Order does not apply in this case.

Building operations

12. Turning then to the exclusion at Q.1(i), the Council has expressed concern that insufficient evidence has been provided to confirm that the conversion could be carried out without structural alterations. It cites its main concern in this respect as regarding the insertion of a new first floor into the building.
13. I acknowledge that the insertion of a new first floor would be very likely to entail new structural elements. The wording of the Planning Practice Guidance (Guidance) on this point states that 'it is not the intention of the permitted development right to include the construction of new structural elements for the building'. However, it goes on to clarify that it is only where the building is 'structurally strong enough to take the loading which comes with the external works to provide for residential use' that the building would benefit from the permitted development right.
14. The Council has not produced any analysis such as to indicate that structural works in respect of the insertion of a new first floor would relate to loading from external works. On the basis that such works represent internal alteration to the building, they would not require planning permission. Bearing in mind the form of construction of the building and that it has stood for a considerable period of time without any significant signs of ill repair or subsidence, I consider that the building would be strong enough to take the loading from the external works proposed in the conversion.
15. Although I note the limitations of the evidence provided by the appellant as regards structural alterations, the Council has not provided any detailed analysis such as to indicate why internal structural alterations would not be permissible. Class Q specifically permits the installation of new roofs which would include roof timbers and this thus dispenses with the Council's concern that the appellant's evidence refers to possible new structurally supportive roof timbers. The appellant has confirmed that the concrete slab construction proposed in the holiday accommodation application would not be proposed in respect of this conversion.
16. For these reasons, I find then that the exclusion at Q.1(i) of the Order would not apply in this case.

Living conditions

17. Turning then to my second main issue, the proposed dwellings would be located on the site of an existing racing stables. At the time of my site visit, a considerable number of horses were on site and it would appear that this is a fairly large enterprise. The dwellings would be in close proximity to an internal road and to the main hub of activity, with other farm and equine buildings positioned quite closely together. Given the nature and scale of the enterprise, I would expect that a high number of vehicle movements would be associated with the operation, potentially with many of these occurring at anti-social hours.

18. The proposed dwellings would not be in such close proximity to the equine accommodation as to cause any harm as regards odour or noise from the horses themselves, which would in any event not be untypical of many countryside settings. This does not though alter my concerns regarding noise from vehicle movements and associated activity.
19. I have considered that the nearest building to the appeal site is not intended for keeping livestock. However, this does not alter the fact that the dwellings would be located close to vehicle movements and activities associated with the operations on site. I note that in another appeal cited¹, prior approval was granted notwithstanding the proposed dwellings being within some 8 metres of an equestrian building. I do not have full details of the planning circumstances of that development in order to form a comparison with the appeal proposal but in any event, it is not the noise or odour from the horses which would concern me but rather the noise from vehicle movements and related activity. I cannot see from the appeal decision cited that similar concerns would have applied in that case. As to the Noise Assessment submitted, this does not appear to give any detailed analysis as to noise from vehicle movements on site.
20. I note comments that the position of the appeal building within a working farm holding is not a relevant material consideration in view of the statement in the Guidance effectively that the fact that a building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a reason to refuse prior approval, given that there is intended to be no stock in the adjacent building. However, it is apparent from Class Q itself that noise is a relevant consideration and numerous other appeal decisions have also considered this under the Class Q permitted development right. Accordingly, I do not consider that this statement prevents the consideration of noise and disturbance related to farm and equestrian activities in this case.
21. I recognise, as indicated in the National Planning Policy Framework, that other regimes exist for the control of noise and other disturbance, and that future occupants of the proposed dwellings would be aware of their siting and indeed there may be a market for dwellings in this sort of location. Nonetheless, these are not good reasons to allow open market dwellings within the middle of a commercial racing stables with all its associated vehicle noise and activity.
22. Although holiday accommodation has been approved on site, the issues of noise and disturbance for occupants of the holiday accommodation would not be comparable to the situation for open market dwellings where the noise would be an ongoing and permanent issue for occupants. The proximity of the farm house itself to the business operations is also not a reasonable comparison given the connection between the farm house and the business.
23. I therefore find in respect of the second main issue that the location and siting of the building makes it otherwise undesirable or impractical for the building to change from an agricultural use to use as dwelling houses, with regard to living conditions for future occupants of the dwelling houses in respect of noise and disturbance. I do not find though that there would be any material harm as regards odour.

¹ APP/J1915/W/15/3141323

Conclusion

24. I acknowledge the appellant's comprehensive plans to improve the rural economy through the development of the holding and that the proposal is intended to enhance the immediate setting. This offers modest support for the proposal but does not outweigh my concerns relating to the living conditions that would result for future occupiers. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should fail.

Veronica Bond
INSPECTOR