
Appeal Decision

Site visit made on 16 May 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 25 May 2017

Appeal Ref: APP/M1005/W/17/3170091

Cwm Deri Farm, Wessington Lane, South Wingfield, Alfreton, Derbyshire DE55 7NB

- 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 (GPDO).
 - The appeal is made by Mr Roland Slack against the decision of Amber Valley Borough Council.
 - The application Ref PDR/2016/0056, dated 25 October 2016, was refused by notice dated 21 December 2016.
 - The development proposed is the change of use of an agricultural building to a dwellinghouse (Class C3) and for associated operational development.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Class Q(a) relates to the change of use “of a building and any land within its curtilage”. For the purposes of Class Q “curtilage” means the piece of land immediately beside or around the building which is closely associated to it, or an area of land immediately beside or around it, no larger than the area occupied by the building, whichever is the lesser. The site location plan, dated 21 May 2015 (revised 21 July 2016) submitted with the application identifies a curtilage that complies with this definition.

Main Issue

3. Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants permission for the change of use of an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, together with building operations reasonably necessary to convert the building. Paragraph Q.1 specifies limitations to Class Q. It is no part of the Council’s case that the proposal fails to comply with the limitations to Class Q in paragraph Q.1. I have no reason to disagree with that position. As a result, the proposal would be permitted development if prior approval were to be granted.
 4. The provisions of the GPDO require the local planning authority to assess the proposed development to determine whether prior approval is required in relation to certain matters. These include the transport, highways and noise impacts of the development; flooding and contamination risks on the site; whether the location or siting of the building makes it otherwise impractical or
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undesirable for the building to change from agricultural use to a dwelling house; and, design or external appearance.

5. Other than in relation to highways, where the Council's view is that safety would be harmed, the Council has found the scheme to be acceptable in relation to these criteria. The appellant disagrees that highway safety would be adversely affected. On the basis of what I have read and seen, in relation to the matters that are uncontested, I agree with the Council's assessment. The main issue therefore in this appeal is the effect of the proposed development on highway safety.

Reasons

Highway safety

6. In determining an application for prior approval under Class Q of the GPDO, paragraph W(10) (b) requires the decision maker to have regard to the National Planning Policy Framework ('the Framework'), so far as is relevant to the subject matter of the prior approval, as if the application were a planning application. Paragraph 32 of the Framework advises that decisions should take account of whether safe and suitable access would be provided.
7. Cwm Deri Farm is located within open fields on the edge of South Wingfield. Wessington Lane separates the farm from a housing estate on the opposite side of the road within the settlement. Although not a main road, it is clear from the site visit that it is a well-used local road. The Lane has street lighting and is subject to a 30mph speed limit. As a result, in accordance with national guidance the Council seeks visibility splays at the access to the farm of 2.4m x 43m in both directions.
8. The highway is wide enough to allow two vehicles travelling in opposite directions to pass. However, when viewed from the access, on road parking opposite means that oncoming traffic from the left has to move onto the nearside of the highway to pass. Whilst this may be accompanied by a reduction in speed, unless adequate visibility is provided in both directions, as soon as a vehicle moves out onto the highway from the access it could immediately come into conflict with vehicles travelling in either direction.
9. At the time that the application was considered, visibility splays at the site access of approximately 10m in both directions existed. Since then the roadside hedges on either side of the access have been severely cut back to allow the necessary splays to be achieved. However, whilst the hedge in relation to oncoming traffic from the right is within the control of the appellant, the hedge in relation to approaching traffic from the left is not. As a result, should the owner of the hedge to the left not allow its future cutting back on his land, in a relatively short period of time, considerably substandard visibility that would demonstrably harm highway safety would once again exist.
10. To address this, the appellant has submitted an agreement made between him and the neighbouring land owner that permits him to cut the hedge so that the visibility splay can be maintained. However, no evidence has been provided, such as evidence of title to the land from the Land Registry, to verify that the other parties to the agreement own the field in question. The agreement is also not expressed to be a deed and has not been witnessed. As a consequence, I am not persuaded that the agreement is legally sound and allows the appellant to cut the hedge and maintain the visibility splay to the left of the access, now or in perpetuity.

11. The access has been in use by the appellant for 27 years by cars and agricultural vehicles with no reported accidents. Notwithstanding this evidence, the absence of incidents over such a long period does not make the access safe. This is because as a substandard access the probability of an incident remains significantly increased.
12. The proposed conversion of the agricultural building would allow the appellant, who is a farmer, to live on site thereby reducing the number of vehicle movements to and from the farm. However, the occupancy of the new dwelling that would be created would not be tied to the farm, or agriculture. As a result, the proposed dwelling in the future could be occupied by residents who may well need to travel by car to work each day. Consequently, use of the access in the future may not be reduced.
13. Taking all these matters into account, I therefore conclude that the proposed development would demonstrably harm highway safety. Prior approval is therefore required and is refused. The appeal should therefore be dismissed.

Ian Radcliffe

Inspector