
Appeal Decision

Site visit made on 23 May 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 29 June 2017

Appeal Ref: APP/J1915/W/17/3169858

**Agricultural Barn to the east of Brickendon Lane, Brickendon,
Hertfordshire SG13 8NR**

- 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 (as amended).
 - The appeal is made by Frontiers Developments Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/2506/ARPN, dated 11 October 2016, was refused by notice dated 29 December 2016.
 - The development proposed is change of use of an existing agricultural building from agricultural use to residential.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of an existing agricultural building from agricultural use to residential at agricultural barn to the east of Brickendon Lane, Brickendon, Hertfordshire SG13 8NR in accordance with details submitted pursuant to Schedule 2, Part 3, paragraph Q.2(1) of the GPDO through application Ref 3/16/2506/APRN, dated 11 October 2016, and the plans submitted with it. The approval is subject to the condition that the development must be completed with a period of 3 years from the date of this decision in accordance with Paragraph Q.2(3) of the GPDO and subject to the further conditions contained in the attached schedule.

Application for costs

2. An application for costs was made by Mr Tony Bly (Frontiers Developments Ltd) against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development in the banner heading above has been taken from the notification for prior approval application form. However, in Part E of the appeal form it is indicated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description has been agreed. Accordingly, I have used the one given in the original application, although I have omitted superfluous location details.
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4. In its appeal statement, the Council advises that it withdraws the fourth reason for refusal given in its decision notice, which alleged that the proposal would result in an isolated dwelling in the countryside remote from services. That appears to be in accord with advice in the Planning Practice Guidance (PPG) that the permitted development right does not apply a test in relation to sustainability of location.¹

Main Issues

5. The main issue is whether or not the proposed development would be permitted development as provided for by Class Q of the GPDO, with particular regard to:
 - the agricultural use of the building as part of an established agricultural unit on or before 20 March 2013;
 - whether the proposal would consist of building operations reasonably necessary to convert the building to a dwellinghouse; and,
 - whether the proposal would result in an increase in flooding risks on the site.

Reasons

Use of the building

6. Schedule 2, Part 3, Class Q(a) of the GPDO sets out that development is classed as permitted development if it consists of the 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 (dwellinghouses) of the Schedule to the Use Classes Order.
7. The GPDO provides interpretation in Paragraph X that an 'agricultural building' is a building used for agriculture and which is so used for the purposes of a trade or business.
8. Paragraph Q.1(a)(i) states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. An 'established agricultural unit' is defined in Paragraph X of the GPDO as agricultural land occupied as a unit for the purposes of agriculture.
9. Paragraph Q.1(a)(ii) is intended to deal with dormant use, such as where a building was not actually being used on 20 March 2013 but, when last used before that, was used for agriculture. This has the effect that if the building was used for agriculture before 20 March 2013 and there has been no intervening or different use, the permitted development right under Class Q would still apply.
10. The appeal building is accessed via a single track lane to the east of Brickendon Road. It has concrete block walls to a height of approximately 2 metres with fibre cement sheeting above at the gable ends and slatted timber to the rear. There is a steel portal frame and pitched roof constructed of further corrugated sheeting. The south west elevation is open, with three bays fitted with cattle

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

feeding gates and a hardstanding to the front. It has all the appearance of an agricultural barn and appears to be in reasonable condition.

11. The appellant advises that the building was constructed for accommodating livestock over 30 years ago and has been used for that purpose continually since. A letter from a director of the appellant company states that the land and buildings are in agricultural use with cattle being housed in the barn over winter and that it is occasionally used for storage during the summer months. It is said by the appellant that silage and cattle feed is placed on the hardstanding frontage which the cattle access through the slatted bars on the feeding gates. A further hard standing area lies to the south east of the barn which, according to the appellant, acts as a cattle handling area. Although the building was not in use at the time of my site visit, the access track was clear and the building appears suitable for the purposes described.
12. A Land Holdings Plan has been supplied by the appellant showing the appeal site and land in the vicinity farmed by Frontiers Developments Ltd, including a substantial block of land to the east of the barn. Invoices in relation to the supply of agro chemicals and the sale of oats in 2016, have also been supplied with the appeal documentation. The Council say that the invoices refer to Clements Farm, which they say appears to be a separate enterprise to the south. However, the invoices do refer to Frontiers Developments Ltd and the appellant contends that their main purpose is to provide supporting evidence that the company operates a farm business and that delivery to contractors operating on their behalf is not unusual. I also note that the Parish Council refer to the barn as on land previously part of Clements Farm, which goes to support an agricultural use.
13. The Council advise that on site visits in August and November 2016 the access track appeared overgrown and the barn was not in use. Photographs have been supplied, which although undated, appear to support that. Nevertheless, they provide only a snapshot of the position on two particular days and the appellant advises that cattle are housed in the barn between December and March. Furthermore, the appellant says that although there is evidence of some overgrowth during the summer, the track would still have been passable by agricultural vehicles. Therefore, the site visit evidence does not, in itself, conflict with the account given of the use of the barn by the appellant.
14. I recognise that the onus is on the appellant to supply sufficient information to establish use. However, in the absence of any clear alternative contradictory evidence from the Council's records or other sources, I find that given the physical appearance of the building itself, its location adjacent to fields and proximate to agricultural land held by the appellant, and the supporting documentation provided by the appellant, I am, on balance, persuaded that there was agricultural use as part of an established agricultural unit at or before the relevant date.
15. There are also some similarities between the types and level of evidence accepted in four appeal decisions², to which my attention has been drawn by the appellant, and the evidence in the appeal before me. For example, land holding documents, written statements, the physical nature of the building and a lack of clear contradictory evidence.

² APP/W1145/W/16/3147549, APP/Z0116/W/16/3149459, APP/U1240/W/16/3144936 and APP/D0840/W/16/3146275

16. Therefore, although the evidence is not conclusive, on the balance of probabilities, I am satisfied that the appeal site meets the requirements of Schedule 2, Part 3, Class Q(a) and Q.1(a) of the GPDO.

Building operations

17. The Council's decision notice states that the proposed building operations would be beyond those reasonably necessary to convert the building. The 'Design and Access incorporating Planning Statement' advises that the existing steel frame and block walls to a height of approximately 1.8 metres would be retained, whilst the fibre cement sheeting above would be replaced by insulated larch timber cladding to all external walls. The existing fibre cement roof would be removed and replaced with insulated roofing sheets, whilst a raised floor would be formed by installing steel supports bolted to the existing steel frame with a block and beam floor supported by the steels. New window and door openings would be created.
18. Paragraph Q.1(i) of the GPDO indicates that development would not be permitted if it consisted of building operations other than the installation or replacement of windows, doors, roofs or exterior walls and water, drainage, electricity or other services to the extent reasonably necessary for the building to function as a dwelling as well as partial demolition, to the extent reasonably necessary to carry out those building operations. It seems to me that the limitation, which specifically refers to development under Class Q(b), gives an indication of the extent and of building operations that would be considered acceptable when making an assessment of whether the requirement in Q(b) is satisfied.
19. There does not appear to be any dispute that the existing building is in reasonable condition, as confirmed by the structural report supplied with the appeal documentation. It concluded that the building was substantial and structurally sound and could be converted without major reconstruction or demolition of the existing structural elements.
20. The appellant has also referred me to an appeal decision relating to a building at Hillhead Road³, which also involved the conversion of an agricultural building to a dwelling. The external works in that case included a new roof and windows and doors within new exterior walls. In the context of that appeal, the Inspector was satisfied that the extent of the proposed works fell within the limitations set out in paragraph Q.1(i). Although the details and particular issues differ in some respects, I agree that there are similarities between the works accepted in that appeal and those in the proposal before me. Therefore, I give the decision some weight.
21. As the proposal would not exceed the limitations in Q.1(i) of the GPDO, as confirmed in the Officer's Report, and would incorporate structural elements of the existing building whilst also being of similar dimensions, I do not agree with the Council's view on the issue. Therefore, I conclude that the development would consist of building operations reasonably necessary to convert the building to a dwelling house.

³ APP/D0840/W/16/3151545

Flooding risks on the site

22. For permitted development under Class Q(a) and Class Q(b), paragraph Q.2.(1) of the GPDO requires the prior approval of certain matters. One of those matters (d) is flooding risks on the site. The PPG advises that a change of use may involve an increase in flood risk if the vulnerability classification of the development is changed.⁴ In this case, the change would be from land and buildings used for agriculture, which is classified as 'less vulnerable', to a dwellinghouse, classed as 'more vulnerable' in Table 2 of the PPG.⁵ It is incumbent on the applicant in such cases to show in their Flood Risk Assessment (FRA) that future users of the development will not be placed in danger from flood hazards throughout its lifetime.
23. That FRA should also demonstrate how any flood risk may be mitigated and that the proposal meets the objectives of the National Planning Policy Framework's (the Framework) policy on flood risk. For example, how the development and flood risks will be managed so that it remains safe and how the operation of any mitigation measures can be safeguarded and maintained effectively throughout the lifetime of the development.
24. The third reason for refusal in the Council's decision notice states that the proposal would increase the risk of flooding on the site. However, there is no clear explanation in the Council Officer's Report or subsequent appeal statement of the basis for that assertion. As the proposal is to convert an existing building without increasing its roof area or any hardstanding, it is not apparent how it would, for example, increase surface water run-off. The understorey void proposed would, according to the FRA, mean that the proposal would not remove volume from the flood plain, subject to an effective inspection and maintenance regime.
25. Whilst the EA advise that they have no available modelling for the location, they have not objected to the proposal and did not object to the previous scheme. However, the Council advise that the East Herts Council 2016 Strategic Flood Risk Assessment (SFRA) does provide details of flood risk for the location, although no copy of the SFRA has been supplied. The consultation response of the Council's Environment and Engineering section was referred to. It raised concerns about this and a previous application, but the essence of those concerns appear to be that the proposal would introduce a residential use on a site located within Flood Zone 3 and at risk of surface water flooding.
26. The site specific FRA, supplied by the appellant, confirms that the appeal site is in Flood Zone 3, indicating that it is at a 'high' risk of flooding from Brickendon Brook, about 6 metres to the north of the barn. The probability of flooding would, according to the FRA, be greater than 1 in a 100 each year. However, it states that Environment Agency (EA) records show no historic flood events on the appeal site itself, although the brook has flooded about 400 metres downstream in both 1987 and 2000.
27. In addition, the FRA acknowledges that EA mapping shows the site to be located in an area of low to medium risk of surface water flooding. Low risk means the probability of flooding each year is between 1 in a 1000 and 1 in

⁴ Paragraph: 048 Reference ID: 7-048-20140306

⁵ Paragraph: 066 Reference ID: 7-066-20140306

- 100 each year whilst the medium risk is between 1 in a 100 and 1 in 30 each year, with flood depths indicated at between 300mm and 900mm. The FRA advises that a spring located about 200 metres southeast of the site may contribute to the surface water flooding.
28. Nevertheless, according to the PPG already referred to, if appropriate mitigation can be provided, informed by an FRA, to ensure that future users of the development will not be placed in danger from flood hazards throughout its lifetime, it is still possible for approval to be given.
29. The FRA's topographic survey indicates that the barn is at an elevation of about 57.72 Above Ordnance Datum (AOD), whilst the top of the banks of the river (Brickendon Brook) are, at their lowest point, 57.36m AOD. Therefore, the existing barn is approximately 0.36m higher than the lowest bank of the river. Based on a comparison of the topographic survey with the EA flood map, the FRA says that Flood Zone 3 would reach approximately 57.85m AOD. Consequently, the FRA concludes that the existing barn would be likely to flood during a 1 in a 100 year flood event.
30. In terms of mitigation, the FRA recommends that, taking account of EA advice, and as a 1 in a 100 year plus climate change figure is not available, the finished floor levels are raised 600mm above the 1 in a 100 year assumed flood level of 57.85m AOD. That would result in a finished floor level of 58.45m AOD, which would, according to the FRA, be at least 1 metre above the southern bank of Brickendon Brook. That finished floor level is reflected in the submitted plans. With regard to surface water flooding, the FRA advises that as the internal finished floor levels would be about 1 metre above external ground levels it would be unlikely that surface water would pool to a level that would cause internal flooding, especially taking into consideration that the external ground would naturally direct surface water towards the brook.
31. A void has been incorporated into the design below the ground floor which will be allowed to flood meaning, according to the FRA, that floodplain compensation is not necessary. Whilst the EA advises that it does not usually accept the use of voids as a method of floodplain compensation as they can become blocked, they state that they do not consider floodplain compensation as necessary as the floodwater is unlikely to enter the site. The FRA also recommends an inspection and maintenance regime for the void area to avoid blockage.
32. With regard to safe access and egress from the site, the FRA advises that land to the immediate south would be higher than the site at 59.00m AOD and outside the flood zone. It notes that the availability of the EA flood forecasting and warning service and recommends that future occupiers register for that service.
33. Whilst the Council's Environment and Engineering section note the proposed mitigation, they state that *'the proposals do not conform to the East Herts SFRA particularly in terms of flood reduction, biodiversity provision, water quality improvement and amenity provision.'* However, there is no explanation in the original Officer's Report or the Council's Appeal Statement as to why the proposed mitigation is not acceptable or fails to meet the requirements of the Framework or the PPG. In the absence of any specific or detailed refutation of the expert advice provided in the FRA, and considering the lack of any

objection from the EA, there is no persuasive evidence before me to bring the FRA findings and recommendations into question.

34. The appellant has also drawn my attention to an appeal decision relating to a Barn at Whitegate Farm⁶, in support of their case on flood risk. It also involved a prior approval application to convert a building to residential use in Flood Zone 3. The site was at risk of flooding from a nearby watercourse and tidal flooding, although the SFRA suggested that the risks would be low. As the Inspector had no or limited evidence to refute the FRA or proposed mitigation via an increase in finished floor levels, the appeal was allowed. Therefore, although I do not have full details of the background in that case, I consider that there are similarities between that appeal and the appeal before me. Therefore, whilst I have determined the appeal on its own merits, I give that appeal decision some weight.
35. I note that the FRA does advise that the access track to the west and the track to the north east (crossing the brook) could be subject to flooding during a 1 in 100 year flood event. However, it indicates that the ground floor of the building should provide safe refuge or that alternatively the land to the south would be available. Although the FRA does at some points suggest that the proposal is for a two storey building, whereas it is only for a one storey dwelling, I do not consider that the confusion undermines the fundamental data and recommendations in the report.
36. The appellant advises that the FRA predates the 2016 SFRA and instead refers to the previous 2008 SFRA, although I note it also considers the Hertfordshire County Council Preliminary Flood Risk Assessment (2011). As I have not been made aware of any specific or critical differences between the 2008 and 2016 SFRAs in relation to the proposal, I have no basis for finding that it undermines the FRA.
37. Therefore, I conclude that flooding risks on the site would not be exacerbated by the proposal and that significant harm to future residents could reasonably be dealt with through the mitigation measures recommended in the FRA.

Other Matters

38. Although the appeal site is, according to the Council, located within the Green Belt, the policy on Green Belts in the Framework is not relevant to Class Q of the GPDO.

Conditions

39. The GPDO imposes standards condition for each class of development. However, as set out in Schedule 2, part 3, paragraph W.(13) prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
40. The Council have suggested conditions, which I have considered and included if appropriate with, if necessary, minor modifications to accord with the relevant PPG on conditions. Paragraph W.(12) of the GPDO advises that development must be carried out in accordance with the details provided, so the plans condition suggested by the Council would not normally be required. However, in the context of this case, it is necessary to impose a condition requiring

⁶ APP/V3310W/16/3151825

compliance with the relevant plans, given that they include details of the raised finished floor level, for certainty.

41. The Council has suggested a condition setting a time limit for commencement of the development. However, Q.2. Paragraph (3) of the GPDO requires the development to be completed within three years of the date of this decision. It is necessary, as suggested by the Council, to include a condition relating to contaminated land, as it is related to one of the matters for which prior approval may be required and to minimise the risk of pollution.
42. A condition relating to surface water drainage is included to ensure that surface water flows are appropriately dealt with in an area acknowledged to be at risk of surface water flooding. Although, it is acknowledged that the proposal is a change of use of a building which appears to have some drainage system in place, a condition would provide additional certainty. Finally a condition securing the flood mitigation detailed in the FRA is required to ensure that the development is adequately safeguarded from flooding.

Conclusion

43. For the reasons giving above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos F44/03/01 B, F44/03/02 B and F44/03/03 B.
- 2) The development hereby permitted shall not begin until a scheme to deal with contamination of land and/or groundwater has been submitted and approved by the local planning authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the local planning authority dispenses with any such requirement specifically and in writing:
 - i) A desk-top study carried out by a competent person to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site. The requirements of the local planning authority shall be fully established before the desktop study is commenced and it shall conform to any such reasonable requirements. Copies of the desk top study shall be submitted to the local planning authority without delay upon completion.
 - ii) A site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be carried out until:
 - a) A desk-top study has been completed satisfying the requirements of paragraph (i) above;
 - b) The requirements of the local planning authority for site investigation have been fully established; and

- c) The extent and methodology have been agreed in writing with the local planning authority.
Copies of a report on the completed site investigation shall be submitted to the local planning authority without delay on completion.
 - iii) A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be agreed in writing with the local planning authority prior to commencement and all requirements shall be implemented and completed to the satisfaction of the local planning authority by a competent person. No deviation shall be made from this scheme without the express written agreement of the local planning authority.
- 3) The development hereby permitted shall not be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and
 - iii) provide a management and maintenance plan for the lifetimes of the development which shall include the arrangement for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 4) The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Letter Report dated 2 August 2016 prepared by EAS and the following mitigation measures:
 - i) Finished floor levels of the dwelling will be set no lower than 58.45m AOD.
 - ii) The undercroft void space and opening shall remain open, free and maintained from all blockages, debris and storage in perpetuity for the life time of the development. The undercroft area shall not be used for any storage facilities.
 - iii) The undercroft void space shall be regularly inspected and cleared in accordance with the recommendations contained in the Flood Risk Letter Report.

The mitigation measures shall be fully implemented prior to the first occupation of the dwelling and remain and continue through the lifetime of the development.