



Appeal Decision

Site visit made on 12 July 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 16th August 2017

Appeal Ref: APP/H2733/W/17/3169326

Low Mill Farm, Carr Lane, East Ayton, Scarborough YO13 9HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant prior 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 Andrew Samples against the decision of Scarborough Borough Council.
 - The application Ref 16/02220/P3Q, dated 26 October 2016, was refused by notice dated 23 December 2016.
 - The development proposed is the change of use of agricultural building to 1 no. dwellinghouse (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the heading above is taken from the appeal form and the Council's decision notice as it is a more accurate and appropriately succinct description of the proposal than that given on the original application form.

Background and Main Issues

3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order (England) 2015 (GPDO) permits the change of use of an agricultural building, and any land within its curtilage, to a residential use, along with building operations reasonably necessary to convert it.
4. There is no dispute between the parties that the development would comply with the criteria of Paragraph Q1 and is therefore permitted development. On the evidence before me, I have no reason to come to an alternative view.
5. Development permitted under Class Q is subject to the condition that before commencement, an application must be made to determine whether prior approval is required in respect of the matters referred to in (a)-(f) of paragraph Q.2(1). The Council determined that prior approval was required. It raised no concerns in respect of the transport and highway, noise or design impacts of the development. I have, on the evidence before me, no reason to disagree. Nevertheless, prior approval was refused on the grounds of the contamination, flooding and locational impacts of the development.
6. On that basis, the main issues are:

- whether there are contamination risks on the site which would make the site unsuitable for residential use;
- whether there are flooding risks on the site which would make the site unsuitable for residential use; and,
- whether the location or siting of the building would make it otherwise impractical or undesirable to change to a residential use.

Reasons

Contamination

7. The appeal relates to a single storey barn largely constructed of brick with a corrugated metal roof. Timber boarded on the front elevation with a large roller shutter door, the building sits adjacent to a field of pasture within a hard surfaced yard a short distance from the main farm house of Low Mill Farm.
8. The building was previously in agricultural use. There is, as a result, the potential for contamination in the ground and the fabric of the building. Indeed, whilst I note the roof sheeting would be removed, it is nevertheless indicated that a significant part of the building is constructed from asbestos.
9. A contamination report has been provided by the appellant which concludes that the level of associated risk from contamination is such that it is unlikely to have an adverse effect on the use of the building as a domestic dwelling nor would it be designated as contaminated land for the purposes of the Environmental Protection Act 1990.
10. However, the report is a single page document setting out the conclusions of a desk based assessment based upon historic map data. There is no evidence of a suitably qualified person having visited the site or indeed carried out any sort of physical site survey or inspection. Moreover, the report suggests that there is unknown filled ground on or within 25m of the site but does not provide any further details of it or its implications for the proposal. I therefore agree with the Council that the scope of the report is rather limited. As a result, I am unable to conclude that the site is free of contaminants or pollution and that residential use of the building would be consequently free from risks of contamination.
11. The appellant suggests that a more detailed contamination report could be subject to a condition. However, for such a condition to meet the tests set out in Paragraph 206 of the National Planning Policy Framework (the Framework) there must be a reasonable prospect that the dwelling could be converted without giving rise to unacceptable levels of contamination. Little substantive evidence has been provided to demonstrate that is a reasonable prospect in this instance.
12. I conclude, therefore, that on the basis of the evidence before me, there would likely be contamination risks on the site which would make the site unsuitable for residential use. Consequently, the proposal would not accord with Condition Q.2.(1)(c).

Flood Risk

13. The appeal site lies within Flood Zone 3a which is defined in the Planning Practice Guidance (the Guidance)¹ as a high risk area with a 1 in 100 or greater annual probability of flooding from rivers and a 1 in 200 or greater annual probability of flooding from seas. Paragraph 100 of the Framework advises that development in areas at risk from flooding should be avoided by directing development away from areas at highest risk.
14. The Guidance advises that a change of use may involve an increase in flood risk if the vulnerability classification of the development is changed². In this case, the change would be from a building used for agriculture, which is classified as 'less vulnerable', to a dwellinghouse, classed as 'more vulnerable' in Table 2 of the Guidance³. It is incumbent on the appellant in such cases to show in a flood risk assessment (FRA) that future users of the development will not be placed in danger from flood hazards throughout its lifetime.
15. The appellant has provided some guidance information relating to flood resilience. However, no evidence of the proposed construction methods or any flood defence or resilience measures that would need to be incorporated into the development has been provided. The appellant indicates that such matters would be subject to a future building regulation application. However, representations from the Environment Agency indicate that it objects on flood risk grounds due to the lack of an FRA. I agree an FRA is required and that the details provided would not constitute an FRA for the purposes of the Framework.
16. The appellant suggests that an FRA could be subject to a condition. However, for such a condition to meet the tests set out in Paragraph 206 of the Framework there must be a reasonable prospect that the dwelling could be converted without giving rise to unacceptable levels of flood risk. Little substantive evidence has been provided to demonstrate that is a reasonable prospect in this instance.
17. I conclude, therefore, that on the basis of the evidence before me, there would likely be flooding risks on the site which would make the site unsuitable for residential use. Consequently, the proposal would not accord with Condition Q.2.(1)(d).

Location

18. The Council take the view that the building would be isolated and as such, the proposal would represent unsustainable development. However, the Guidance states that the permitted development right under Class Q does not apply a test in relation to the sustainability of a location⁴. It states that this is deliberate as the permitted development 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.
19. In this respect the test under Paragraph Q.2(1) of the GPDO is not simply one of the sustainability of the proposal but whether the location or siting of the

¹ National Planning Practice Guidance Paragraph:065 Reference ID: 7-065-20140306

² Planning Practice Guidance: Paragraph 048 Reference ID 7-048-20140306

³ Planning Practice Guidance: Paragraph 066 Reference ID 7-066-20140306

⁴ Planning Practice Guidance: Paragraph 108 Reference ID 13-108-20150305

building makes it otherwise impractical or undesirable to change to a residential use.

20. The Guidance states that a reasonable, ordinary dictionary meaning should be applied to the terms impractical and undesirable⁵. It further states that the term impractical reflects that the location and siting would “not be sensible or realistic”. The term undesirable reflects that it would be “harmful or objectionable”. It goes on to state that the fact an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval. It provides the example of an agricultural building on the top of a hill with no road access, power source or other services as one where its conversion would be impractical and the example of a building adjacent to other uses such as intensive poultry farming, silage storage or buildings with dangerous machines or chemicals as undesirable.
21. Whilst I note the dwelling would be in close proximity to a pig sty, the appellant indicates that the sty has not been used for over 2 years. I was able to see from my site visit that the sty did not appear to have been in use for some time. I recognise there is little evidence to support the appellant’s claim that there is no intention to use the sty in the future and that, if it were to be used, there would be the potential for some odours. However, I consider it reasonable to take the view that future residents would expect some level of such odours when living on a farm complex in the countryside. Indeed, such odours are often a feature of rural locations. As such, on the evidence before me, I am satisfied that the location of the appeal site would not result in two wholly compatible uses within extreme proximity to such an extent that would be harmful to the living conditions of future occupiers.
22. I conclude, therefore, that the location or siting of the buildings would not make it otherwise impractical or undesirable to change to a residential use. Thus, the proposal would accord with Condition Q.2.(1)(e).

Conclusion

23. Paragraph W(3) of Schedule 2, Part 3 of the GPDO states that an application for prior approval may be refused where the development has provided insufficient information to establish whether the proposed development complies with any conditions specified in Part 3 as being applicable to the development in question.
24. Whilst I am satisfied the location or siting of the buildings would not make it impractical or undesirable to change to a residential use, I have found that insufficient information has been provided to demonstrate that there are no contamination or flooding risks on the site which would make the site unsuitable for residential use.
25. As a result, for the reasons given above, and having considered all other matters, I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR

⁵ Planning Practice Guidance: Paragraph 109 Reference ID 13-109-20150305