



Appeal Decision

Site visit made on 25 July 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 24 August 2017

Appeal Ref: APP/Y2736/W/17/3166683

Old Manor Farm, Main Road, Helperthorpe, Malton, North Yorkshire YO17 8TQ

- 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 Ms Lynne Porter against the decision of Ryedale District Council.
 - The application Ref 16/01823/GPAGB, dated 31 October 2016, was refused by notice dated 9 December 2016.
 - The development proposed is the change of use of agricultural buildings to form 1 no. four bedroom dwelling and 2 no. one bedroom dwellings (Use Class C3).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the proposed development on the application form is for *'conversion of existing buildings forming two sides of an existing fold yard in a traditional farm complex. A row of single storey stables and stores is to be converted into two 1 bed cottages and a higher building (currently a granary and hayloft) will be converted to provide a 4 bed house. The existing farm is well screened from neighbours and street by mature hedges and trees. See also the block, site and floor plans'*. However, the description of the proposal on the Council's decision notice is for *'change of use of agricultural buildings to form 1 no. four bedroom dwelling and 2 no. one bedroom dwellings (Use Class C3)'*. I have used this latter description in the above heading as it accurately reflects the development for which prior approval is sought under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 GPDO).

Main Issues

3. Firstly, there is dispute as to whether the proposal meets the requirements of Class Q of the 2015 GPDO with particular reference to whether the curtilage falls within the definition in Part 3 X of the 2015 GPDO.
4. Furthermore, for permitted development under Class Q (a) development consisting of a change of use of a building and any use within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order requires approval of five matters. On the basis of the evidence before me the main issues in this case are whether the location and siting of the buildings makes it impractical or

undesirable for the buildings to be changed to Class C3 dwellinghouses, in terms of whether future occupants would have suitable living conditions with particular reference to noise, odour and general disturbance, the effect on the living conditions of existing and future occupants of the site with particular reference to privacy and disturbance from vehicles passing in close proximity to the existing dwelling, whether the proposal makes suitable provision for parking and access and the effect of the proposal on ecology.

Reasons

Whether the proposal meets the requirements of Class Q

5. The Council contends that if the access and parking areas associated with the proposed conversion were included within the curtilage of the properties the development would fail to be permitted under Schedule 2, Part 3 Class Q of the 2015 GPDO. This is due to the definition under Schedule 2, Part 3, Class X defining curtilage as '*(a) a piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser*'. Although their position is not entirely clear it appears that the Council has taken this position because the proposed access and parking area shown on the application plans are separated from the agricultural buildings to be converted by the existing fold yard which lies between them.
6. In this case the area of land identified for six car parking spaces (one disabled) and access is outside the application boundary. Therefore, although it might reasonably be expected that the land in question would form part of the curtilage, or at least part of the application site, this is not the case and consequently it cannot be said that the proposed curtilage of the three properties falls outside the definition of curtilage as defined under Part 3, Class X of the 2015 GPDO.
7. Consequently, on this issue I conclude that in these particular circumstances and on the basis of the evidence before me in this case the proposal does meet the requirements of Class Q of the 2015 GPDO with particular reference to whether the curtilage falls within the definition of curtilage in Part 3 X of the 2015 GPDO.

Ecology

8. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which may result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species and the extent that it may be affected by the proposed development is established before permission is granted. Ecological surveys should only be required where there is a reasonable likelihood of species being present and affected by the development.
9. In this particular case, at the time of the determination of the prior approval application, it is my understanding that no protected species survey had been undertaken and submitted to the Council. However, a scoping survey for protected species and habitats relating to the current proposal has been submitted with the appeal documentation. No evidence of habitation by bats

was recorded in the scoping survey, either in hibernation or as a roosting or breeding site. Consequently the survey concludes that the site has a low to medium potential for habitation by bats.

10. However, the survey was undertaken in December and therefore has limitations. In order to confirm the findings the survey concludes that an emergence survey should be carried out during the breeding season between May to August, inclusive. To my knowledge no such emergence survey has yet been undertaken. In my opinion exceptional circumstances have not been demonstrated and therefore conditioning further surveys would not be an appropriate course of action in this particular case.
11. On the basis of the evidence before me I therefore consider there to be insufficient information to conclude at this stage that there is no reasonable likelihood of species being present. Consequently, the proposal may have a harmful effect on ecological interests of the buildings in question.

Location and siting

12. The appeal site comprises an agricultural unit with a large modern agricultural building to the rear which would be situated adjacent to the proposed conversion of the existing granary building. The future use of the modern agricultural building is not of significant concern in terms of the proposed Orchard Cottage and The Stables owing to there being sufficient distance between them to mitigate potential harm in terms of noise, odours and general disturbance. However, the building and the proposed Granary are in such close proximity to one another to warrant concern regarding the potential effects of future uses. The appellant has stated that the small scale agricultural operations associated with the small holding of only approximately 4.5 hectares in size will transfer to the modern general purpose building adjacent to the Granary dwelling. I have also noted that the agricultural building in question would also be transferred to the appellant's daughter who is proposed to be the first occupant of the adjacent Granary.
13. The appellant contends that the odours, noise and general disturbance would be relatively minimal and acceptable within this particular location and that intensive agricultural uses are not likely to take place at any time in the future. At my site visit there appeared to be very little agricultural activity on site and if that situation continues the effect of such activity on the proposed conversion is likely to be relatively insignificant.
14. It has also been suggested that in line with the approach taken by a previous Inspector on a different case a suitably worded planning condition could be attached to any permission which could restrict intensive agricultural operations and the storage of silage, dangerous machinery or chemicals in the modern agricultural building. I also understand from the appellant that the building is not suitable for livestock in its current form and I have no evidence to dispute otherwise. I do not consider that a condition restricting the use of an agricultural building for non-agricultural purposes would be reasonable; however, I do consider that in the specific circumstances of this case, in the event of allowing the appeal, it would be appropriate to restrict the use of the building in order to ensure it is not used for intensive livestock or agricultural operations and other activities likely to be prejudicial to the living conditions of potential future occupants of the granary conversion.

15. The appellant contends that the agricultural building, associated land and the Granary would be transferred to a family member who would be its first occupant and that such an arrangement would mitigate potential harm from adjacent residential and agricultural activities associated with the small holding. I agree with the Council's assertion that the current application cannot be used to control the transfer of ownership of land or buildings. However, a condition could be used in the event of granting permission which restricts the occupancy of the Granary and other proposed residential properties to the appellant or family members. I consider that such an approach would be a reasonable way of mitigating any potential harm that may arise from conflicting adjacent uses.
16. The proposed dwellings and Old Manor Farm would have a particularly close relationship to one another. This would undoubtedly result in a degree of overlooking between the properties and adjacent private amenity spaces. Occupants would pass by and through the private amenity space of the existing property for access purposes resulting in overlooking and loss of privacy to an unacceptable degree. There would also be potential overlooking into the properties from communal areas. The effect of the proposal on the proposed Orchard Cottage, The Stables and the rear/side garden of Old Manor Farm is of particular concern, with the current proposal providing little privacy to each property. However, I have noted the appellant's intentions that the site is occupied communally by the extended family. As such it is reasonable to accept reduced standards of privacy and, indeed, in this particular case family members would not necessarily expect the levels of privacy that may be expected in normal circumstances. Therefore in the event of permission being granted an occupancy condition could be used to overcome this particular concern.
17. The Council has also raised concerns relating to the effect of the development on the living conditions of existing occupants in terms of the disturbance from vehicles movements passing by the existing dwelling. However, given the likely relatively low number of daily movements associated with two one bedroom dwellings and one four bedroom (including the living room / guest bedroom) dwelling I do not consider that sufficient disturbance would be likely to cause an unacceptable level of harm to the living conditions of existing occupants in terms of noise and disturbance from vehicle movements.
18. I have noted that the area shown for six car parking spaces (one disabled) falls outside the application boundary. Consequently, I have no evidence that the land in question would be available for allocated spaces for the proposed dwellings. Therefore, there is no control over this land through the current application and, as such, a situation could arise where no parking or vehicular access is available to the dwellings. In this particular case it would not be appropriate for me to condition a legal agreement requiring there to be rights of access across the drive or guaranteeing access to parking, none of which would be within the dwellings' curtilages based on the evidence before me.
19. Consequently, a situation could arise where the residential proposed properties could be sold separately without having the benefit of car parking spaces or access.
20. On the basis of the above I conclude that the location and siting of the buildings makes it impractical and undesirable for the buildings to be changed

to Class C3 dwelling houses as set out in paragraph Q.2 (1) of Part 3 of Schedule 2 of the 2015 GPDO, on the grounds that the proposal does not make suitable provision for parking and access.

Other matters

21. I have noted the family's circumstances; however, I do not consider that these circumstances outweigh the harm that I have identified above. I am also aware that an alternative proposal has been submitted to the Council, but this has no bearing on the current appeal before me.

Conclusion

22. For the reasons given above and taking into account other matters raised I conclude that the appeal should be dismissed.

Alastair Phillips

INSPECTOR