The Planning Inspectorate

Appeal Decision

Site visit made on 31 July 2017

by Rachel Walmsley BSc MSc MA MRTPI

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

Decision date: 30 August 2017

Appeal Ref: APP/J1860/W/17/3170493
Barn at OS 7789 5008, Leigh Sinton Road, Lower Interfields, Malvern, Worcs.

- 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 Mr & Mrs Hodgkiss against the decision of Malvern Hills District Council.
- The application Ref 16/01193/PDU, dated 9 August 2016, was refused by notice dated 4 October 2016.
- The development proposed is conversion of existing agricultural building to a single dwelling house.

Decision

1. The appeal is dismissed.

Procedural matters

2. The provisions of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended) (GPDO) require the local planning authority to assess the proposed development against the criteria set out in Class Q, taking into account any representations received. My determination of this appeal has been made in the same manner.

3. The Council has not cited conflict with policies of the development plan in their refusal notice, associated officer report, or in the course of the appeal. As such I have approached the appeal on this basis.

Main Issues

4. Schedule 2, Part 3, paragraph Q.1 of the GPDO sets out that development proposed under class Q(a) and (b) is permitted subject to an application to the local planning authority for a determination as to whether their prior approval is required in relation to the matters set out in Schedule 2, Part 3, paragraphs Q.1(a) to (m).

5. There is no dispute that the proposal meets the requirements of Schedule 2, Part 3, paragraphs Q.1 (a) to (j) or (l) to (m) of the GPDO. The matters in dispute are whether the proposal would comply with paragraph Q.1(k)(ii) of the GPDO, and if so, whether the proposal would comply with paragraph Q.2(1)(d). The main issues in this case are, therefore:

(i) whether the appeal site is, or forms part of a safety hazard area, and therefore whether the proposal would meet criteria Q.1(k)(ii) and constitute permitted development; and,

(ii) if so, whether the proposal would comply with paragraph Q.2(1)(d) of the GPDO, namely whether the change of use would result in a risk of flooding.

Reasons

Permitted development criteria

6. The appeal site concerns an agricultural building which is set within a yard which includes other outbuildings. The application for prior approval concerns the change of use of the agricultural building to a dwelling house.

7. The GPDO defines a safety hazard area as an area that has been notified to the local planning authority *by the Health and Safety Executive for the purposes of paragraph (e) of the Table in Schedule 4 to the Procedure Order…or by the Office for Nuclear Regulation…'*

8. I have before me two location plans which show a High Pressure Gas Pipeline which runs to the north of the agricultural building and that has a buffer zone within which the development would sit. The Council suggests that the Health and Safety Executive (HSE) notified the local planning authority of this line, which has subsequently been included on the Council's constraints plan. I do not have any correspondence between the HSE and the Council before me, nor any reference to the plan being part of a constraints plan. However I note within the appellant's evidence, advice obtained from the HSE's planning advice web app which indicates that the agricultural building is within a distance of the gas pipeline such that the HSE needs to be consulted. This strongly suggests that the Council's constraints plan correctly depicts a High Pressure Gas Pipeline that is a constraint to the site.

9. Comments from the HSE following the appellant's consultation with them did not raise an objection to the principle of the development on the site. However, for the purposes of the GPDO and establishing if the change of use would be permitted development, the criterion for assessment is whether the appeal site is, or forms part of a safety hazard area. Taking all the evidence into consideration, I find that the appeal site forms part of a safety hazard area. Therefore, irrespective of the comments from the HSE and the risks that the development may or may not pose, the development would not meet criteria Q.1(k)(ii) of the GPDO and as a result would not be permitted development.

Flooding

10. Notwithstanding my findings above, had the building been able to be considered under the provisions of Schedule 2, Part 3, Class Q.1 of the GPDO, Class Q.2 states that *the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to criteria (a) to (f).* The criterion in dispute is criterion (d) concerning flooding and in the absence of any evidence to suggest otherwise, it is on this basis that I consider the second main issue.

11. It is common ground that the development requires a Flood Risk Assessment (FRA). During the course of the appeal a FRA was submitted which overcomes the Council's concerns for the absence of such a document and generates no further cause for concern by the Council. The FRA identifies that there would be no adverse impacts in respect of flooding as a result of the proposed development. In the absence of any evidence to suggest otherwise, I find that the development would not result in flood risk. The proposal would, therefore, comply with paragraph Q.2(1)(d) of the GPDO, namely that the development would not result in a risk of flooding.

Conclusion

12. Whilst the proposal would comply with paragraph Q.2(1)(d) of the GPDO, it would not comply with criteria Q.1(k)(ii). Consequently the development would not constitute permitted development and therefore prior approval for the proposed change of use cannot be granted. For this reason the appeal is dismissed.

R Walmsley

INSPECTOR