
Appeal Decision

Site visit made on 15 January 2018

by Chris Couper BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th April 2018

Appeal Ref: APP/J3720/W/17/3181422

Agricultural building at Field Farm, Hardwick Lane, Studley, Warwickshire B80 7AE

- 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 (a) and (b) of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr William Green (W E Green and Son (Studley) Ltd) against the decision of Stratford on Avon District Council.
 - The application Ref 17/00916/COUQ, dated 29 June 2016, was refused by notice dated 19 May 2017.
 - The development proposed is the conversion of the barn into 2 x 3 bed and 1 x 4 bed dwellings measuring a total of 449sqm with the remaining floorspace to be left void and/or in non-residential use, refurbishment and recladding, internal works and the creation of domestic curtilages and parking areas.
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Decision

1. The appeal is dismissed.

Procedural matters and background

2. I have summarised the description of the proposal in the heading above from section 2 of the appellant's statement, which is more concise than the details at part 4 of the application form.
3. Since the Council issued its decision, changes to the Town and Country (General Permitted Development) (England) Order 2015 ('GPDO'), were introduced by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018. I have had regard to those changes in my decision, and my references to the GPDO reflect the revised paragraph numbering following that amendment.
4. In its letter dated 5 October 2017 the Council has drawn my attention to a recent decision on the appeal site (Ref: 17/02145/COUQ) ('second scheme'). That proposal involved the change of use of the same building to 3 dwellings, and was refused on the grounds that the demolition of a section of the building had not been justified as reasonably necessary for the required building operations. Nevertheless, in assessing the second scheme, officers concluded that the building was sound, could withstand conversion without the need for major structural work, and that the proposed external works were reasonably necessary for the building to function as a dwellinghouse.

5. Consequently, the Council indicates that it does not wish to defend its second reason for refusal on the appeal scheme, which alleged that the proposed works would be excessive, involving significant structural work, such that the scheme would be tantamount to a new building rather than works of conversion.
6. Following my site visit, and based on the available evidence, I have no reason to doubt that the building is structurally sound. Its steel frame and sections of blockwork walls would be retained, and I am satisfied that the proposed building operations would fall within the scope of works set out at Schedule 2, Part 3, Q.1. (i) of the GPDO, and that the proposed building operations would be reasonably necessary for the building to function as a dwellinghouse. I have therefore had no further regard to the second reason for refusal.
7. However, the Council maintains that the scheme would still not be permitted development as it would fail to meet other limitations in Schedule 2, Part 3, Class Q of the GPDO.

Main Issues

8. Having regard to the above background, the main issues are:
 - i) whether or not the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO; and
 - ii) if it is, whether the transport and highways impacts of the development, and flooding risks on the site, would be acceptable.

Reasons

Whether or not permitted development

9. Section Q.1.(b) of the GPDO sets out that development is not permitted by Class Q if the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or the floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465sqm. At (c) it sets out that development is not permitted if the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or the floor space of any one separate dwellinghouse exceeds 100sqm. 'Building' is defined in Article 2 of the GPDO as including 'part of a building'.
10. The principal parties agree that the floorspace of the existing building is 493sqm, with an additional 7sqm in the form of a small lean-to. However, the submitted drawings show that whilst most of the building would be converted to provide 3 dwellings, a slice within it would be retained in agricultural use, used as a store, or left empty. The parties agree that the floorspace of the proposed dwellings would be 449sqm.
11. At the time of the Council's decision, the GPDO set out that development is not permitted if *'the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 sqm'*. Notwithstanding the somewhat contrived arrangement proposed here, and the Council's concerns that the scheme would not comply with the spirit of the legislation, as the floorspace of the existing building changing use would be under 450sqm, the proposal would have complied with that limitation.

12. Whilst I have considered the scheme following the amendments to the GPDO, the cumulative number of dwellings developed under Class Q, and the cumulative amount of floorspace changing use would still comply with the new limitations, as summarised above. As the proposal would comply with the limitations and restrictions applicable to Class Q, it would be permitted development.

Highways impacts and flooding risks

13. At Q.2.(1) the GPDO sets out various conditions where the development proposed is development under Class Q(a) together with development under Class Q(b). Those stipulate that the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to (a) transport and highways impacts of the development; (b) noise impacts of the development; (c) contamination risks on the site; (d) flooding risks on the site; (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses); and f) the design or external appearance of the building.
14. Notwithstanding its conclusion that the scheme would not be permitted development, in its delegated report the Council has concluded in relation to each of those issues either that prior approval is not required, or that it is required and is given.
15. Given the Council's findings, on the basis of my visit, and in the absence of any substantive evidence to the contrary, I have no reason to find differently in relation to issues (b), (c), (e) and (f).
16. Turning to issues (a) and (d), concerns have been raised by interested parties that the access point is prone to flooding, and that additional works there could increase the flood risk to adjacent properties. By way of evidence, which was submitted at the application and appeal stages, adjacent residents at Holyoake Cottages have provided a screen shot of the Environment Agency's flood risk map roughly showing the western side of Hardwick Lane at flood risk, together with photographs showing the first part of the access track, the nearby section of the lane and the adjacent field, under water during flash flooding in 2016.
17. Although the Environment Agency was consulted during the course of this appeal, it stated in its email dated 9 March 2018 that it is not a statutory consultee, and it made no comment on the proposal. The Flood Risk Management team at Warwickshire County Council also stated that it was unable to provide comments at the appeal stage.
18. For his part, the appellant points out that the Council did not raise objections to the development on the grounds of flood risk, and that the access could be surfaced with permeable tarmac with no increase in ground levels required. He continues that the track and adjoining fields are lower than the third party land, and that a scheme of flood mitigation could be secured by condition.
19. Other than site plan drawing no. 2959_002 Rev A, I have very few details of the access point on Hardwick Lane and no levels information. The scheme was not accompanied by a flood risk assessment. However, based on the evidence submitted by interested parties, I accept that this part of the lane, and at least some of the adjacent land, is subject to flooding.

20. The existing access point is very uneven, with a loose surface and an indistinct edge. It narrows from the carriageway, and drops in height. In response to the scheme, Warwickshire County Council Highway Authority suggested a condition requiring that the access be widened/remodelled to 5 metres wide for a minimum distance of 7.5 metres from the carriageway edge. Given the likely vehicular movements associated with the proposal, to enable two vehicles to safely pass at this point, and in the interests of highway safety, I consider that such a condition would be necessary.
21. However, from the very limited available information, I am not persuaded that those works could be carried out without some change in levels, or remodelling of the land. Such works could in turn have an impact on the extent, or likelihood, of flooding here and on adjacent land, including the residential properties opposite. As the extent of any required access improvement and flood mitigation works is very unclear, this matter could not be adequately dealt with by conditions. Notwithstanding the Council's decision, I am not satisfied that the proposal would not unacceptably increase the risk of flooding.

Conclusions

22. I have found that the scheme would be permitted development. In reaching my decision I have had regard to the site's planning history, including a previous consent for the change of use of the barn to 3 dwellings. However, I have few details of that scheme, and I have considered this one on the basis of the evidence before me.
23. Having regard to the necessary improvements to the site access, I am not persuaded that the scheme would not have an unacceptable impact on flooding risks. Consequently, having regard to all other matters raised, the appeal is dismissed.

Chris Couper

INSPECTOR