



Appeal Decision

Site visit made on 15 October 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2019

Appeal Ref: APP/A0665/W/19/3232842

The Former Hatcheries, Newton Hollows Road, Kingsley, Frodsham, Cheshire WA6 6HY

- 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 Malgar Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 19/01513/PDQ, dated 18 April 2019, was refused by notice dated 21 June 2019.
 - The development proposed is one dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal relates to Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Class Q(a) of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses), and, under Class Q(b), building operations reasonably necessary to convert the building.
3. There is no dispute between the parties that the proposal would meet the requirements of Schedule 2, Part 3, Part Q.1 (a–m) of the GPDO and, therefore, that it constitutes Permitted Development under Class Q, subject to the prior approval of certain matters. On the evidence before me and from my observations on site, I have no reason to come to an alternative view.
4. However, for permitted development under Class Q(a), together with development under Class Q(b), paragraph Q.2(1) of the GPDO requires prior approval of six matters. These include (a) the transport and highways impact of the development; (b) noise impacts; (c) contamination risks, (d) flooding risks on the site and (f) the design or external appearance of the building. In this case, the sole matter in dispute relates to criterion (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). Moreover, the reason for refusal cites only the latter.
5. The Council's Officer Report does also refer to the proposal being impractical. Consequently, I have had regard to the Planning Practice Guidance (PPG)¹,

¹ PPG Reference: When is permission required? Paragraph: 109 Reference ID: 13-109-20150305 (05 03 2015)

which clarifies that a reasonable ordinary dictionary definition meaning of impractical should be used in making any judgment. It states that impractical reflects that the location and siting would “not be sensible or realistic”. It provides the example of the conversion of an agricultural building on the top of a hill with no road access, power source or other services. I have nothing before me in this case to indicate that the proposal would be impractical in this regard. I observed that the building benefited from services and it was easily accessed from Newton Hollows Road.

6. Moreover, the PPG indicates that ‘undesirable’ reflects that the location and siting would be “harmful or objectionable”. Given the specific reference in the decision notice to matters of noise, disturbance and/or odours, I am satisfied that it is reasonable in this context to consider the likely effect of the prior approval on living conditions and whether such effects would make it undesirable to allow the conversion.

Main Issue

7. Therefore, on the basis of the evidence submitted, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, with regard to whether the location and siting of the building makes it undesirable for the building to change to a Class C3 dwellinghouse, principally in terms of its effect on the living conditions of future occupiers of the proposed dwellinghouse.

Reasons

8. The appeal site is a two-storey red brick flat roof building. It is part of a larger premises that accommodated the previous use of the wider site as a chicken hatchery. On my site visit, I observed that the connected building, which is also within the appellant’s ownership, includes a substantial red brick pitched roof structure, that also incorporates a first-floor space, with two single storey interconnected elements. Until 2018, when the hatchery ceased, the appeal site was used for ancillary storage on the ground floor with offices on the floor above. The proposal would use the existing structure to convert it into a three-bedroom dwelling. It would, however, remain adjacent to the retained building on the wider site.
9. The appellant contends that, along with the appeal site, this adjacent building is not conducive to an agricultural function. I appreciate that it was purpose built for use by the Ministry of Defence. I also observed that it is not a standard agricultural building, being laid out to different rooms. However, the structural survey indicates that the ground floor is of solid concrete-slab construction, which are not atypical of agricultural buildings. The internal walls are also largely of block construction and could be reconfigured. Consequently, it would not be unreasonable to assume that it could be adapted from its current form.
10. In any event, the site was used for agriculture until 2018 and that remains its extant purpose. Furthermore, whilst the definition of agriculture at Section 336 of the Town and Country Planning Act refers specifically to dairy farming, it also includes the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur). It was on these terms that it was used as a hatchery. Given this broad definition, I have no definitive evidence before me that it would be unsuited to the keeping of livestock and nothing before me to demonstrate that it is insufficiently modern.

11. I have had regard to the appellant's evidence on marketing the site, which commenced in January 2019. It included adverts in the local paper and on local and national estate agent websites, as well as the UK Farm and Land website. However, whilst referring to the former hatchery, I am mindful that the sales particulars make no specific reference to its extant agricultural use.
12. Moreover, the price was not included in the particulars, which state 'Price on Application'. I appreciate that this was to encourage enquiries and interest without restriction. Nonetheless, whilst the marketing report does set out the estimated value of the property, I have nothing before me to demonstrate that it was equitable to other agricultural buildings within the area, or that it has been marketed at an appropriate price on realistic terms. Even though I acknowledge that there have been no viewings of the premises since marketing began, it has been less than 12 months and taking these factors together, I am not persuaded that there is no prospect of an agricultural use coming forward.
13. The PPG advises that the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals². Whilst presently vacant, if brought back into use, the immediate proximity of the proposed dwelling to the agricultural building would give rise to the potential for significant levels of disturbance to its future residential occupiers, with particular regard to noise/disturbance and smells. No evidence has been presented to indicate how these might be mitigated.
14. Moreover, Paragraph W(10)(b) of Schedule 2, Part 3 of the GPDO requires that regard must be had to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval. Paragraph 127 of the Framework seeks a good standard of amenity for existing and future users of development. In this case, the scale of the building adjoining the appeal site could result in significant agricultural activity. It would not be unreasonable to conclude that if occupied for such purpose, there would be a substantial amount of smell, noise and disturbance. This would be harmful to the future occupiers of the proposed dwelling and the it would be undesirable as a result.
15. I recognise that Paragraph W(13) of Schedule 2, Part 3 of the GPDO confirms that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. I have had regard to the appellant's contention that a condition could be imposed to prevent the use of the adjoining building for the keeping of livestock or poultry or to require that it be used specifically for agricultural storage. However, the legitimate planning use of the site is for agriculture.
16. Having regard to the tests at Paragraph 55 of the Framework, it would, in my view, be unreasonable to restrict the building to a non-agricultural use or to agricultural storage. In any event, any agricultural operation within it, including storage, could reasonably require machinery and vehicles, with the potential to cause significant disturbance to the occupiers of the proposed dwelling given its closeness. Consequently, such a condition would not overcome the undesirable proximity of the dwelling to the agricultural building, which would be harmful to future occupiers.

² PPG Guidance: When is permission required? Paragraph: 109 Reference ID: 13-109-20150305 (05 03 2015)

17. My attention has been drawn to an appeal decision involving the conversion of a former calf-rearing shed to provide a single dwelling on the first floor. I appreciate that the Inspector acknowledges the potential to change the use of part of an agricultural building under Class Q, having regard to the Hibbitt³ case. However, whilst the Inspector did not restrict the use of the ground floor, the decision states specifically that it would be used for agricultural storage. Moreover, I have no evidence that a horizontal conversion would have any potentially greater adverse impact on the living conditions of a residential unit on the upper level. The subsequent prior approval for 2 dwellings⁴ also refers to the use of the ground floor for agricultural storage and the Council's Officer Report concludes that no particular noise issues were identified.
18. I have also been referred to four decisions in the local area. I have not been provided with full details of these cases but from the references provided, three appear to relate to applications for planning permission, rather than being subject to a specific assessment of prior approval⁵. In the case of the prior approval at Haughton Barn, in contrast to the appeal proposal, there was a greater distance between the proposed dwellings and the nearest agricultural buildings. Consequently, I do not find either the appeal decision or these decisions to be directly comparable to the proposal before me and, in any event, I must consider this appeal based on its own merits.
19. I therefore conclude that the location and siting of the appeal building makes it undesirable for the proposed change of use to a Class C3 dwellinghouse, as identified in paragraph Class Q.2(1)(e) of Part 3 of Schedule 2 of the GPDO. This is due to its proximity to an agricultural building and the subsequent potential effect on the living conditions of future occupiers of the proposed dwellinghouse as a consequence of noise, disturbance and/or odours.

Other Matters

20. No evidence has been presented that the proposed development would result in any significant transport and highway impacts, contamination or flooding risks or design and appearance issues and I have no reason to come to a different conclusion. Therefore, it would be acceptable in terms of matters (a), (c) (d) and (f) of Paragraph Q.2(1) of Part 3 of Schedule 2 of the GPDO. With regard to matter (b), other than the potential impact on the proposed dwelling of noise from agricultural operations at the site, which has been considered above as part of matter (e), no other noise impacts have been presented and I have no evidence to lead me to an alternative view.

Conclusion

21. Having considered all matters raised, however, for the reasons given above, I conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR

³ Hibbitt v SSCLG (2016) EWHC (Admin)

⁴ Council Ref: 19/01772/PDQ

⁵ Council Refs: 18/00235/FUL, 16/04599/FUL and 13/05395/FUL.