
Appeal Decision

Site visit made on 14 July 2020

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2020

Appeal Ref: APP/A2525/W/20/3246640

Land off Green Dyke, Gedney Dyke, Spalding PE12 0BF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, 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 Cunnington (C R Cunnington & Sons Ltd) against the decision of South Holland District Council.
 - The application Ref H06-0829-19, dated 14 August 2019, was refused by notice dated 15 October 2019.
 - The development proposed is change of use of agricultural building into dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development on the application form simply states “see plans and elevations”. I have therefore taken the description from the Council’s decision notice as this accurately describes the proposal.

Background and Main Issues

3. Schedule 2, Part 3, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a dwelling.
4. Paragraph Q.2. of the GPDO says such development is conditional that before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to among other things (b) noise impacts of the development, (c) contamination risks on the site and (d) flooding risks on the site. These matters form the basis of the Council’s reasons for refusal.
5. A Phase 1 Contamination Report has been submitted with the appeal. However, the Council have not commented on it. As I am dismissing the appeal for other reasons this matter is not determinative. I have not therefore sought the Council’s views on it or considered it in any depth. However, that report has been prepared by a competent person and contains a number of reasonable recommendations which subject to all other matters being acceptable could have been conditional upon any grant of prior approval.

6. The Council is satisfied that the proposal would be permitted development if the conditions of paragraph Q.2. of the GPDO were met. I see no reason to come to a different view.
7. Therefore, the main issues are whether the impacts of the development are such as to require refusal of prior approval under paragraphs Q.2. and W.(3) of the GPDO with particular regard to:
 - noise impacts of the development
 - flooding risks on the site

Reasons

Noise

8. The appeal site is close to Wingland Airfield which has planning permission¹ to be used for flying microlight and model aircraft subject to a single condition restricting aircraft to those powered by electric motors only.
9. I acknowledge the appeal site could be used for 28 days a year within the terms of the GPDO without requiring a planning application and this could result in noise generating activities such as microlight flying. I therefore note this type of noise could be experienced in many locations which are close to dwellings.
10. I note the comments that safe flying conditions for microlights only exist for roughly 129 days of the year. I also note that microlight noise emissions are regulated and I have considered the associated evidence. I also accept that any future occupiers of the proposed dwelling would be aware of the proximity of the airfield, the noise generated by such and that many dwellings are habited close to noise emitters such as airports or roads.
11. However, whilst I accept the appeal site is in a location which benefits from some degree of tranquillity arising from its agricultural surroundings, the proximity of the airfield is such that it is reasonable to conclude it could generate significant and frequent noise over and above what would be reasonably expected to be experienced in a dwelling.
12. In turn, without substantive evidence in the form of a sufficiently detailed noise assessment I must take a precautionary approach and conclude there would be a significant risk of harmful living conditions for future occupiers with particular regard to noise generated by the nearby airfield. The proposal is not therefore acceptable in respect of matter (b) noise impacts of the development of paragraph Q.2. (1) of the GPDO.

Flooding

13. The proposed dwelling would be located in Flood Zone 3 as identified on the Environment Agency's Flood Zone Maps. A site-specific flood risk assessment (FRA) is therefore required. Paragraph 163 of the National Planning Policy Framework (the Framework) states development should only be allowed in areas at risk of flooding where, in the light of this assessment it can be demonstrated that among other things, within the site, the most vulnerable

¹ Appeal Decision APP/A2525/C/10/2133906

development is located in areas of lowest flood risk and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

14. I note the appeal decision relating to a scheme in Kent². However, the full details of that scheme are not before me and in any event they cannot be used to justify the approach to flood risk mitigation in a location with different localised flood risks.
15. The Environment Agency have objected to the appeal scheme raising concerns associated with the FRA. Even if I were to find the proposed finished floor levels acceptable, the plans³ appended to and referred to in the FRA are different to those plans⁴ determined by the Council and before me. This is important because the plans before me show four bedrooms at ground floor level whereas the plans considered in the FRA show all sleeping accommodation at first floor level.
16. This undermines the credibility of the FRA and overall, I cannot be satisfied that the risk of sleeping accommodation at ground floor level in this location has been adequately assessed or that it has been adequately considered in any emergency plan. I must therefore find the proposal is not acceptable in respect of matter (d) flooding risks on the site of paragraph Q.2. (1) of the GPDO.

Conclusion

17. I have found the proposal would not meet the conditions of paragraphs Q.2. and W.(3) of the GPDO in respect of the noise impacts of the development and flooding risks on the site. Prior approval is required on these matters and I have found based on the evidence before me that it should not be granted. The proposal is not therefore permitted development and the appeal should be dismissed.

L Fleming

INSPECTOR

² Appeal Reference APP/G2245/W/16/3143027

³ Proposed Plans and Elevations dated Jan 17

⁴ PLAN+ELEVATIONS dated 25 July 2019