
Appeal Decision

Site visit made on 5 August 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2020

Appeal Ref: APP/A1530/W/20/3251468

Picketts Farm, Church Road, Fingringhoe, CO5 7BL

- 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(1) and Schedule 2, Part 2, Class Q, Paragraph Q.2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
 - The appeal is made by W.A.Ketley & Sons against the decision of Colchester Borough Council.
 - The application Ref 192686, dated 25 October 2019, was refused by notice dated 19 December 2019.
 - The development proposed is conversion of agricultural building into a dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by W.A.Ketley & Sons against Colchester Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - whether the location or siting of the building would make the proposed development undesirable; and
 - whether there are contamination risks which would be likely to make the site unsuitable for residential use.

Reasons

Location or siting of the building

4. The appeal building is located within a working farm yard comprising a number of existing buildings. The farm is based primarily on livestock and during my visit I saw cattle housed within the farm yard and within the adjacent field. The appeal building is a brick built structure, located within the centre of the farmyard, with a large portal frame building built directly up to the side elevation of the appeal building. There are two further buildings located to the rear and side of the proposed dwelling and together they form a tight knit group of buildings.

5. The side elevation facing into the existing portal frame building would include the front door and a number of windows serving both the open plan kitchen/dining/living room and the bedroom. The roof of the portal frame building would restrict daylight and sunlight into these windows. On the opposite side further windows are provided and these would face onto the agricultural building approximately 6m away.
6. I accept that the starting premise in such cases is that subject to the provisions of the Order, planning permission is granted for the classes of development described as permitted development in Schedule 2. However, one of those provisions is whether the building subject to the appeal would as a result of its location result in an impractical or undesirable home for a future occupier.
7. The National Planning Practice Guidance (PPG) at paragraph 109 (reference ID: 13-109-20150305) advises that there is no definition of impractical or undesirable but that the ordinary dictionary meaning should be used in making a judgement in this case. Impractical reflects that the location and siting would not be sensible or realistic and undesirable reflects it would be harmful or objectionable.
8. The proposed development would be located within a working farm and is located centrally amidst other onsite structures which have been built around it. Although the proximity to livestock and the general workings of a farm may be considered to be the natural outcome when providing national permitted development rights for the conversion of agricultural buildings to residential dwellings, in this instance I consider the location of the proposed dwelling with its front door opening directly into the adjoining livestock building would be neither sensible or realistic and results in an impractical home for future occupiers.
9. I consider that the location of the proposed dwelling would result in unacceptable harm to the living conditions of future occupiers due to the potential for odours and noise having regard to the proximity and interconnectivity between the livestock buildings and the proposed dwelling. This potential for disturbance resulting from both the livestock and from the comings and goings associated with the working farm yard would be objectionable to future occupiers.
10. The appellant suggests there is insufficient evidence to support the Council's case with regard to noise and odour. Nonetheless, it is reasonable to conclude that due to the close proximity of the buildings in this instance, with livestock housed on both sides of the proposed dwelling, that there is a significant likelihood of disturbance from the normal day to day operations of the farm. This would be particularly noticeable during summer months when occupiers may wish to have their windows open given their position directly opening into and opposite livestock buildings.
11. The appellant acknowledges that the occupation of the dwelling by anyone other than someone employed or directly involved with the farm would be unlikely due to its siting within the middle of a working farmyard. However, the planning permission under Part 3, Class Q would be for an open market dwelling and therefore the living conditions should be of an acceptable standard for any future occupier. The PPG confirms that factors such as whether the property is for a rural worker are unlikely to be relevant.

12. The appellant has provided examples of two other appeals which considered whether the location or siting of the building would make the proposed development undesirable. However, the first example dealt with the outlook onto agricultural land and noise and disturbance and I do not know whether the siting of the proposed dwelling was similar to the case before me. In addition, the Inspectors decision states that the nearest barn to the appeal building was only used for livestock during the winter months, which is not the same as the case before me. In the second example the buildings nearest to the proposed dwelling were formally used for poultry farming and did not meet current standards for poultry rearing and were used for storage. Therefore, whilst I have taken these into account in coming to my decision, I do not consider that they are directly comparable.
13. In conclusion, I find that the location and siting of the building would make the conversion to residential use impractical and undesirable. As such, the proposal fails to comply with the requirements of Paragraph Q.2(1)(e).

Contamination

14. The building subject to the appeal has a corrugated sheet roof which the Council considers may contain asbestos. The appellant has not submitted any evidence to confirm whether this is the case nor has a Phase 1 Environmental Study been submitted. The Councils Contaminated Land Officer has not suggested that the residential use would be unacceptable due to the presence of contaminants but that further investigations and remediation would be required. In addition, the control of asbestos is subject to separate regulations which would also ensure the adequate protection of future occupants. Therefore it would appear to me that the contamination would be at a level that could be made suitable for the residential use.
15. Section W(13) of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 allows for the granting of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. A condition to require a more detailed investigation as suggested by the Contaminated Land Officer would be related to one of the matters for which prior approval may be required. Therefore, there would appear to be the power to incorporate a suitably worded condition, should I have been allowing the appeal.
16. In conclusion, the contamination risks would be unlikely to make the site unsuitable for residential use subject to the imposition of a suitably worded condition.

Other matters

European designated sites

17. The appeal site falls within a 'Zone of influence' for the European designated sites of the Essex Estuaries Special Area of Conservation, Blackwater Estuary SPA and Ramsar Site, Dengie SPA and Ramsar Site and the Colne Estuary SPA and Ramsar Site and the Stour and Orwell Estuaries SPA and Ramsar site (South Shore). Natural England has provided advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations.

18. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to establish whether the Regulation 77 process under the Conservation of Habitats and Species Regulations 2017 had been followed, and the pre-commencement condition imposed under Article 3(1) pursuant to Regulation 75 had been complied with. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

19. For the reasons given above I conclude that whilst the site would not be at unacceptable risk from contamination, the location and siting of the proposed dwelling would be impractical and undesirable. The appeal is therefore dismissed.

G. Pannell

INSPECTOR