

Appeal Decision

Site visit made on 14 July 2020 by S Witherley CIHCM MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2020

Appeal Ref: APP/G2713/W/20/3248196

Station Farm, Ingleby Greenhow, Great Ayton, North Yorkshire TS9 6LJ

- 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) Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Lordstones Development Ltd, against the decision of Hambleton District Council.
 - The application, Ref 19/01449/MBN, dated 6 June 2019, was refused by notice 4 September 2019.
 - The development proposed is notification for prior approval for a proposed change of use of an agricultural building to 3 No. dwellinghouses (Class C3) and for associated operational development.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3 (1) Schedule 2, Part 3, Class Q, Q(a) and Q(b) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of an agricultural building to 3 No. dwellinghouse (Class C3) and for associated operational development, at Station Farm, Ingleby Greenhow, Great Ayton, North Yorkshire TS9 6LJ, in accordance with the terms of the application Ref 19/01449/MBN, dated 10 July 2019. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2 (3) of the GPDO and subject to the following additional condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing No. D (90) 01 Rev F, D (00) 1 Rev B, D (00) 02 Rev A, D (00) 03.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that 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 3 (dwelling
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- houses); and (b) building operations reasonably necessary to convert the building referred to in (a), is permitted development subject to the prior approval of the local planning authority of specific matters.
4. Where development is proposed under Class Q(a) and (b), as in this case, development is permitted subject to the condition that before beginning the development, the prior approval of the local planning authority will be required as to (a) the transport and highways impacts of the development; (b) noise impacts; (c) contamination risks; (d) flooding risks; (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 (dwelling houses); and (f) the design or external appearance of the building.
 5. The Council accepted that the proposal would constitute permitted development. However, the application for prior approval was refused because the Council considered that the proposed dwellings would be in close proximity to agricultural activities which would be impractical or undesirable in terms of living conditions for future occupiers, with particular regard to noise and smell.
 6. Before prior approval under Class Q can be evaluated, it is necessary to determine whether or not the proposal falls to be considered as permitted development. In situations where this is not the case, the appeal must be dismissed. Although this is not disputed between the main parties, I am required to determine this appeal on its individual merits and in accordance with the requirements of the GPDO. Accordingly, I must reach my own conclusion on whether or not the proposal constitutes permitted development.
 7. As part of this evaluation it was necessary to seek confirmation from both parties as to what was taken as the existing curtilage for the purposes of the application and also the size of each proposed dwelling and its associated curtilage.
 8. The appellant submitted an amended site plan¹ which both parties agreed confirmed the curtilage and this plan also provided details of the size and area of each individual dwelling and their respective curtilage. However, given the requirements as set out within the GPDO, whilst the size of the land identified appeared to fall within the limitations of the scale of the curtilage as set out in Part X, the proposed area marked on the drawings for the associated car parking and turning area fell outside of the defined curtilage.
 9. The GPDO is unambiguous in that it sets out that the permitted development rights only applies to land within the curtilage, therefore, any proposed change of use relating to land outside the defined curtilage cannot fall within the scope of the permitted development regime. Views of both parties were again sought in order to establish how they considered the scheme for the proposed car parking and turning area should be assessed given that this area fell outside of the defined curtilage and outside of the scope of what can be permitted under the terms clearly set out in the GPDO.
 10. The Council considered that all development required to facilitate the development should be incorporated within the scope of the application and not be reliant of a further grant of planning permission for these areas. The

¹ Drawing No. D (90) 01 Rev E

appellant provided a further amended site plan² showing the parking of vehicles in the respective curtilages of the dwellings with access via the existing road into the site. This shows the curtilage area for each dwelling and associated parking as being no greater than the land occupied by the agricultural building.

11. I have determined the appeal on the basis of this revision, mindful of the Wheatcroft principles. I consider that the amendments are not of a scale that the development is so changed that if I were minded to allow the appeal and grant planning permission, it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
12. Despite the declaration date on the application form, both parties, as a result of my request, have confirmed that the application was validated on 10 July 2019 following payment of the application fee. The application was therefore a complete application on 10 July 2019. The Council issued a determination on 4 September 2019 that prior approval was refused.

Background and Main Issue

13. On the basis of the information submitted with the application, the amended site location plan, and my observations during my site visit, there is no dispute between the parties that the development would be permitted development for the purposes of the Order, having regard to the limitations listed in paragraph Q.1 (a-m) of Class Q, and I would agree.
14. The Council has identified that in terms of the criteria the change of use would not give rise to any issues in relation to highway safety, contamination, flooding risks on the site; and the design or external appearance of the building and I have no reason to disagree with these findings.
15. The main issue is therefore whether the location or siting of the existing buildings make the change of use to three dwellings otherwise impractical or undesirable in terms of living conditions for future occupiers, with particular regard to noise and smell.

Reasons for the Recommendation

16. The words impractical or undesirable are not defined in the regulations but the Planning Practice Guidance advises that these should be given a reasonable dictionary meaning in making any judgement. In this context impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable". The Council note in their report that the proposal as a result of its siting would not be impractical as set out in the PPG, however, they consider that the proposal would be undesirable in terms of impact from farming activities in terms of odour, noise and flies.
17. The appeal buildings are part of an existing farmstead which includes a number of stone buildings on the wider site at Station Farm, in addition to a traditional two storey farmhouse. To the other side of the farmhouse across a small access area is another detached residential dwelling. To the west of the site is an agricultural building and beyond that and across a small brook is a further agriculture building with a large hardstanding area.

² Drawing No. D (90) 01 Rev F

18. The Council consider the location of the appeal buildings to the nearby agricultural activities would be harmful to the living conditions of the future occupiers in terms of noise and smell. Little evidence has been provided to substantiate those concerns, with no indications of the type, level or frequency of noise or odours that would be likely, or whether any noise complaints had been received from the existing properties nearby.
19. The appellant has provided some technical details regarding noise and odour controls and in the absence of any contrary evidence I am satisfied that the details contained are reliable and objective. Having regard to the nature of operations involving beef cattle and the good management practices described by the appellant any noise or odour could be adequately controlled such that there is no reason to withhold prior approval as a matter of principle.
20. From my observations at the time of my site visit I was able to determine that the site is a working farm and the appellant asserts that it is an arable and beef fattening farm. Both parties refer to a recent planning permission for a nearby agricultural unit which would be used for activities associated with the farm. I saw that this had been constructed and was located across the small brook.
21. The appellant claims this would be used as the primary location for livestock operations along with the adjacent large area of hardstanding. I also noted that this area had a new access which was separate from the existing road leading up to the appeal site, thereby diverting farm traffic away from the appeal buildings. The agricultural building located nearest to the appeal site would according to the appellant be used for the storage of hay and straw. I have no reason to consider that these buildings would be used for any other purposes and the Council have provided no evidence to the contrary.
22. I observed at my site visit that there were farm animals in an adjoining field, however, these were located some distance from the appeal buildings and appeared sufficiently far away as not to cause any undue noise or smells to the occupants of the appeal site. Indeed, when I visited, I could not detect either noise, smell or flies from the animals in the field or from within or around the surrounding agricultural buildings that were located near to the site.
23. I also observed that the existing attached farmhouse and detached dwelling were separated from the adjoining fields and agricultural activities by approximately the same distance as the appeal buildings. As such, any farming activities and subsequent noise and odours related to those activities would have an impact on the occupiers of these buildings. Whilst I appreciate that the occupants of these existing buildings might be farm workers and their families and, therefore familiar with associated farming activities, it would still remain in their best interests that any associated agricultural noise and smell would not exceed unacceptable levels for both existing occupiers and future occupiers of nearby residential buildings. The site is located in a rural area and future residents would be aware of the location of the properties close to a rural enterprise. It is not uncommon for farming activity to take place close to residential properties in villages and rural locations and there is nothing unusual about the location of the proposal in that sense. Moreover, as stated, there is nothing to indicate that the farming practice surrounding the site would generate noise or smell above what could reasonably be expected in a rural area.

24. I consider that there is sufficient separation from the agricultural buildings and, their respective uses, from the appeal buildings, therefore, the living conditions of the future occupants of these buildings would not be unduly harmed as a result of excessive noise, smell and flies associated with the nearby farming activities. Having regard to the above findings, I find on the evidence I have been provided with and, from my observation at the time of my site visit, I see no reason why prior approval should not be granted in this circumstance as the location or siting of the existing buildings make the change of use to three dwellings neither impractical or undesirable in terms of living conditions for future occupiers, with particular regard to noise and smell.

Conditions

25. Paragraph Q.2(3) of the GPDO specifies that development under Class Q(b) must be completed within a period of 3 years starting with the prior approval date.
26. Section W (13) of Part 3 of Schedule 2 of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested a condition to secure the parking as set out in the submitted site plan, however, as set out within the preliminary matters above the site plan was amended for the purposes of confirming the proposed curtilage subject to the change of use. Therefore, for the avoidance of doubt, I recommend that a condition is attached to ensure that the development is carried out in accordance with these approved plans as this provides certainty and clarity.
27. The Council have also suggested a number of informatives. Whilst these are not added to appeal decisions, through the Council's evidence, the appellant is now aware of these.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

29. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, agree that the appeal should be allowed, and prior approval should be granted.

Chris Preston

INSPECTOR