



Appeal Decision

Site visit made on 22 September 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2020

Appeal Ref: APP/Y2003/W/20/3254675

Bridge Farm, Scawcett Lane, Epworth DN9 1LQ

- 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 Mr C A Douglas against the decision of North Lincolnshire Council.
 - The application Ref PA/2020/440, dated 12 March 2020, was refused by notice dated 13 May 2020.
 - The development proposed is described on the applications form as 'Convert agricultural barn to a C3 Use. See attached Planning Statement and drawings 1 to 6 of 6'. (sic)
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for proposed change of use of an agricultural building to dwellinghouse (Use Class C3) at Bridge Farm, Scawcett Lane, Epworth DN9 1LQ, in accordance with the terms of application ref PA/2020/440, dated 12 March 2020, and the details submitted with it subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. The Council have described the development as 'proposed change of use of an agricultural building to dwellinghouse (Use Class C3)'. I note that the appellant has also utilised this description on their appeal form. I consider that this revision provides a succinct and accurate description of the proposal and I have therefore determined the appeal on this basis.
3. It is common ground that the appeal scheme meets the requirements of paragraph Q.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) such that it would constitute development permitted under Class Q, subject to the prior approval of certain matters. For permitted development under Class Q(a), namely a change of use from an agricultural building to a Class C3 dwellinghouse, prior approval is required in respect to a number of matters, including whether the location or siting of the development make it impractical or undesirable for the use of the building to change.
4. The Council, in determining the application, seems to have been satisfied that, if prior approval were to be granted, the proposal would be permitted development.

Main Issue

5. In light of the above, the main issue is whether the location or siting of the agricultural building makes it otherwise impractical or undesirable for it to be used as a dwellinghouse in terms of its effect on the living conditions of future occupiers of the proposed dwellinghouse, having particular regard to noise, odour and disturbance.

Reasons

6. Paragraphs 108 and 109 of the Planning Practice Guidance (the Guidance) make it clear that a test in relation to the sustainability of the location of the site should not be applied as the permitted development right recognises that agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. The fact that the site may be in a location where permission would not normally be granted for a dwelling is not a sufficient reason for refusing prior approval. Rather, the test is whether the location or siting of the building would make it impractical or undesirable to change its use to a dwelling, for example if it is adjacent to other uses that could cause pollution or disturbance.
7. In relation to such permitted development rights, the Guidance also advises that a reasonable ordinary dictionary meaning should be applied to 'undesirable' as it appears in the GPDO to reflect that it would be "harmful or objectionable". Paragraph 13 of section W of the GPDO allows conditions to be attached to a prior approval provided that they are reasonably related to the subject matter of the prior approval.
8. Paragraph W(10)(b) of Schedule 2, Part 3 of the GPDO requires that regard must be had to the National Planning Policy Framework so far as relevant to the subject matter of the prior approval as if the application were a planning application. Para 127 f) of that Framework, amongst other things, states that planning decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users.
9. The Council refused to grant prior approval for a single reason which was that the proposal would be undesirable given its location and siting in immediate proximity to an operational agricultural enterprise would cause unacceptable harm to the living conditions of future residents having particular regard to noise, odour and disturbance.
10. The agricultural building to be converted is located adjacent to the existing farmhouse and in front of a large shed mainly used to store old motor vehicles and currently unused farm equipment. It is also close to the existing paved parking area and vehicular access which appears to serve the existing farmhouse. To the rear of the agricultural and adjacent large shed there is a more open area of gravel with a grassed area and small orchard at the end of it. At the edge of this grassed orchard area is a wooden fence beyond which is an open paddock/field.
11. On the opposite side of the agricultural building is another large agricultural shed which is used for the storage of bales of hay and farm machinery including a tractor, beyond this there is another similar shed and a second vehicular access onto Scawcett Lane. The open face of both these large sheds front onto a gravelled and concreted area.
12. While on my site visit, I observed that these large sheds were full of hay bales and each housed a tractor. Consequently, whilst what I observed represents but a snapshot in time, I consider that the area in front of these two large sheds, would appear to be where the majority of the agricultural activities occur.

13. It is not a matter of dispute between the parties that the proposal would be located next to a working farm and that as a result there would be some noise and disturbance caused to the future occupiers of the proposed dwelling. At the time of my visit, there were no activities or agricultural operations taking place nor could I smell any unacceptably unpleasant odours. The level of traffic on Scawcett Lane during this snapshot in time was also not significant.
14. Consequently, and given the fact that the area is predominately rural, I consider the area to be relatively quiet when no agricultural operations are being undertaken on the land surrounding the appeal property. Moreover, I also consider the area in and around the existing farmhouse to be relatively free from noxious odours.
15. In addition to the conversion of the agricultural building to a dwelling, the submitted plans appear to indicate that the existing large shed immediately behind it would be removed with part of the proposed amenity/garden area occupying some of its current footprint. As a result, it would be reasonable to think that the majority of the agricultural operations undertaken at the farm would be done so in the part of the farm on the other side of the large shed building closest to the proposal.
16. While I acknowledge the Council's point that the agricultural operations on the land near the appeal site would cause noise and disturbance, given the amount of machinery I observed on the farm I consider the operations on it to be small scale. I also acknowledge that these operations could at some future date be intensified. However, this is something which person(s) engaged in these operations would a) be more comfortable with, and b) be more able to directly control and so I fail to see why this could not be adequately mitigated via the imposition of an appropriately worded occupancy condition. Indeed, the appellant has specifically commented that he *"would accept an agricultural occupancy clause if such an occupancy restriction would tilt the appeal in favour of being allowed"*.
17. Additionally, given the fact that the large agricultural sheds appear to be primarily used for the storage of hay and also given the distance of the proposal from the paddock/field area to the rear of the small orchard, I also consider that the living conditions of its occupiers would not be unacceptably harmed by intolerable levels of harmful odours resulting from any farm activities undertaken on the other parts of the site.
18. In any event, I have no evidence before me to suggest that the current agricultural operations on the farm cause any nuisance with regard to noise, odour or disturbance and the imposition of the occupancy condition mentioned above would also reduce the likelihood of a complaint being made by the proposal's future occupiers.
19. I therefore conclude that neither the location nor siting of the agricultural building would make it impractical or undesirable for it to be used as a dwellinghouse.

Other Matters

Flood Risk

20. The appeal site is located within an area of high flood risk. A flood risk assessment was submitted as part of the original planning application and the Environment Agency have not objected to the proposal. Consequently, I am satisfied that any potential flood risk could be adequately mitigated by the imposition of a suitably worded condition to ensure that the proposed development would be carried out in accordance with the submitted flood risk assessment.

Contamination

21. Given that the building has been used for agriculture, and its location on a smallholding, there is the possibility that the site could be contaminated. The Council's Environmental Health officer recommends that a condition be imposed, and the fact that the Council's formal decision in relation to the application did not include a reason for refusal relating to this matter also suggests that it considers this to be an appropriate course of action.
22. Whilst the GPDO allows prior approval to be withheld if there is insufficient information, it also allows conditions to be imposed. I am satisfied that in this case the latter course of action would ensure that appropriate investigations are carried out and that remediation would be taken if necessary, to address any potential contamination risks on the site.

Objections made by Interested Parties

23. In so far as they are relevant to the main issues, I have also taken account of the representations made by the Parish Council. Neither these nor any of the other matters raised outweigh or alter my conclusion on the main issue.

Conditions

24. Paragraph 3 of section Q2 of the GPDO requires the development to be completed within a period of three years starting with the date of this decision, and paragraph 12(a) of section W of the GPDO requires the development to be carried out in accordance with the approved details.
25. In addition to these standard requirements, it is necessary to impose a condition setting out procedures to be followed in the event that contamination is discovered on the site during the course of development. This is to ensure that future occupants of the building would not be subject to pollution, and that the proposed development would not lead to increased risk of pollution elsewhere.
26. In order to protect the living conditions of the proposal's future occupiers and in order to mitigate any potential flood risk, I have also imposed a condition to ensure that it would be in accordance with the recommendations of the submitted flood risk assessment.
27. In addition, in the interests of the living conditions of the proposal's future occupiers, I have imposed necessary conditions requiring the completion and retention of on-site parking provision and vehicular access to serve the proposed dwelling.
28. Finally, in the interests of the living conditions of the proposal's future occupiers, I have also imposed a condition restricting the occupancy of the proposed dwelling to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

Conclusion

29. For the reasons set out above, I conclude that the appeal should be allowed, and approval granted.

C Coyne

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Elevations Drawing No. 3 of 6 Ref No. 1089; Proposed Floor Plans Drawing No. 4 of 6 Ref No. 1089; Block Plan Drawing No. 5 of 6 Ref No. 1089; Location Plan 1 Drawing No. 6 of 6 Ref No. 1089.
- 3) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) by Howard J Wroot Chartered Surveyor, dated 10 March 2020 and the following mitigation measures set out within the FRA:
 - a) First floor finished floor levels set no lower than 6.2 metres above Ordnance Datum (AOD) as stated within section 5.5.
 - b) No habitable uses on the ground floor as stated within section 5.4 and shown on the enclosed floor plans.
 - c) Flood resilience measures as outlined in section 5.6.
 - d) These flood resilience measures shall be incorporated to a level of at least 4.4m AOD.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme.

- 4) The development hereby permitted shall not be occupied until the vehicular access to it and the vehicle parking space(s) serving it have been completed and, once provided, the parking space(s) shall be retained thereafter.
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives

and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing within 30 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 30 days and approved in writing within 30 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 9) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.