



Appeal Decision

Site visit made on 24 November 2020

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 2 December 2020

Appeal Ref: APP/X3540/W/20/3255996

Greenside Farm, St Margaret, South Elmham, IP20 0PR

- 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 Dr Kristopher West against the decision of East Suffolk Council.
 - The application Ref DC/20/0520/PN3, dated 4 December 2019, was refused by notice dated 2 April 2020.
 - The development proposed is change of use of an agricultural building to a single dwelling house with associated curtilage to provide access, parking and amenity space as indicated on the accompanying plans and drawings.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of an agricultural building to a single dwelling house with associated curtilage to provide access, parking and amenity space as indicated on the accompanying plans and drawings at Greenside Farm, St Margaret, South Elmham, IP20 0PR in accordance with the terms of the application, Ref DC/20/0520/PN3, dated 4 December 2019. The approval is subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application for prior approval has been submitted under Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). Class Q(a) is narrow in scope and only permits the change of use from agricultural buildings to dwellings. It does not permit building operations. Drawings showing layout, elevations and landscaping have been submitted with the application. For the purpose of this appeal I have taken the details shown on these drawings as indicative only.
3. I have amended the description of the proposal within my decision to reflect what has been applied for and make clear that it is for a change of use rather than a conversion. I have determined the appeal on this basis.

Main Issue

4. The main issue is whether or not the proposal is permitted development having regard to Schedule 2, Part 3, Class Q(a) of the Order.

Reasons

5. The site comprises a Dutch barn and its curtilage. Schedule 2, Part 3, Class Q of the Order permits development consisting of (a) 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) of the Schedule to the Use Classes Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
6. Paragraph Q.1 (a) of the Order states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013. The appellant has provided a statutory declaration that the building was in use for agriculture at that date. The Council has accepted this and I see no reason, from the evidence before me, to dispute it.
7. Whilst acknowledging, within the application form and planning statement accompanying the proposal, that building operations would be necessary to make the building suitable for residential occupation the appellant has made it plain that this application seeks the change of use of the building with respect to Class Q(a) only and that permission for the works would be covered under a separate planning application for the building operations which accompanied the proposal before me¹.
8. The Council contests the validity of this approach because of the clear likelihood that extensive building works would be necessary to convert the building to enable the change of use. However, there is nothing in the Order² that explicitly precludes prior approval applications being made for change of use only under Class Q(a) in these circumstances. Moreover, whilst applications cannot be made under Class Q for building operations alone, any building operations reasonably necessary to convert the building could feasibly be captured within a subsequent application for change of use and building operations under Class Q(b), or indeed the application for planning permission which accompanied the application which is the subject of this appeal.
9. Accordingly, notwithstanding the content of the Council's reasons for refusal, any assessment of building operations reasonably necessary to convert the building, and whether or not such works would fall within the scope of a conversion³, lie outside of my remit in this case as they are simply not proposed and cannot be considered as part of the proposal. Furthermore, the scheme would comply with the requirements of Paragraph W.(2)(a) of the Order as what is proposed has been fully described within the application documents.
10. There is no dispute between the main parties that the scheme would meet the requirements of Part 3, Class Q.1 (b)-(h) and (j)-(m) and, on the evidence before me, I have no basis on which to reach a contrary view. Regarding the conditions within Q.2, the site would use an existing access shared with a

¹ Council Ref: DC/20/0513/FUL

² Nor the Planning Practice Guidance (PPG) or the Exploratory Memorandum to the 2018 amendments to the Order

³ Having regard to PPG Paragraph: 105 Reference ID: 13-105-20180615 and the judgment handed down in *Hibbitt and another v Secretary of State for Communities and Local Government* (1) and *Rushcliffe Borough Council* (2) [2016] EWHC 2853 (Admin).

development with the benefit of permission on adjacent land⁴. If one substitutes the use by agricultural vehicles for that of domestic family vehicles highway safety would not be prejudiced, subject to appropriate planning conditions as suggested by the Local Highway Authority (LHA).

11. The site has had a previous use that is associated with a risk of contamination. I note the concerns of the Council's Environmental Health Officer with regard to the previous use and, in these circumstances, it would be prudent to safeguard against the presence of unexpected contaminants. This could be achieved by the use of suitably worded planning conditions.
12. Both the main parties agree that the location or siting of the building is not otherwise impractical or undesirable for it to change from agricultural use to a use falling within Class C3. Furthermore, there is no substantive evidence that the scheme would harm biodiversity, subject to the imposition of a suitable planning condition.
13. For these reasons, I conclude that the proposal would constitute permitted development having regard to Schedule 2, Part 3, Class Q(a) of the Order.
14. The Council nevertheless refused the application for prior approval, being of the view that the buildings in question are probably incapable of conversion without extensive construction works. The appeal building is not currently habitable and would likely require significant works to become so. As such, building works will be necessary at some point if the buildings are to function as dwellings. The appellant acknowledges this and has made a planning application in this regard.
15. However, the existing building would not become a dwelling until it is occupied, but it is currently uninhabitable. As such, a change of use granted under Class Q(a) is incapable of being implemented in this instance. It is therefore likely that the planning application would need to seek approval for both building works and a residential change of use. This would fall to be considered against development plan policies concerned with rural conversions. In the circumstances, it is highly unlikely a Class Q(a) prior approval incapable of being implemented would be a 'fall-back' position. Moreover, if significant works are subsequently required, and these amount to rebuilding, then Class Q(a) could not be engaged, as Class Q cannot apply to structures that require rebuilding to function as a dwelling.
16. The appellant may make an application for prior approval under Class Q(b) of the GPDO, or, as they have done, submit a planning application to convert the buildings to dwellings. It is at this point that the Council could consider building works and ascertain whether they would be appropriate or amount to rebuilding. Accordingly, the Council has erred in considering building works at this point, because they cannot be advanced or considered under an application pursuant to Class Q(a) of the GPDO.

Conditions

17. In accordance with Condition Q.2(3) of the Order, the approval is subject to the condition that development must be completed within a period of 3 years from the date of this decision. Paragraph W(12) of the GPDO requires the

⁴ Council Ref: DC/17/5018/FUL

development to be carried out in accordance with the approved details. I have listed these as a condition for the avoidance of doubt.

18. In addition the Council has suggested eight conditions, including two requested by the LHA. The appellant has had the opportunity to comment on these and I have considered their suitability.
19. The site has had uses in the past associated with a risk of contamination and so conditions are necessary to ensure that the site would not result in environmental damage through the release of contaminants.
20. A condition is necessary to control the provision of parking and ensure that vehicles entering the site are able to turn and leave in forward gear so as to protect residential amenity and safeguard the travelling public.
21. A condition controlling the collection of waste is necessary to protect the amenity of neighbours and ensure that operations are safe.
22. I have amended some of the suggested wording of the Council's conditions for clarity.

Conclusion

23. In conclusion, for the reasons given above, the appeal is allowed.

I Dyer

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The change of use hereby permitted shall begin not later than 3 years from the date of this decision in accordance with Paragraph Q.2(3) of the Order.
- 2) The change of use hereby permitted shall be carried out in accordance with the location plan drawing entitled "Class Q Barn Location" numbered 22-242 Revision C dated January 2017.
- 3) Contaminated Land: Site Investigation

The change of use hereby permitted shall not take place until a site investigation consisting of the following components has been submitted to, and approved in writing by, the Local Planning Authority (LPA):

1. A desk study and site reconnaissance, including:
 - a) a detailed appraisal of the history of the site;
 - b) an inspection and assessment of current site conditions;
 - c) an assessment of the potential types, quantities and locations of hazardous materials and contaminants considered to potentially exist on site;
 - d) a conceptual site model indicating sources, pathways and receptors; and
 - e) a preliminary assessment of the risks posed from contamination at the site to relevant receptors, including: human health, ground waters, surface waters, ecological systems and property (both existing and proposed).
2. Where deemed necessary following the desk study and site reconnaissance an intrusive investigation(s), including:
 - a) the locations and nature of sampling points (including logs with descriptions of the materials encountered) and justification for the sampling strategy;
 - b) explanation and justification for the analytical strategy;
 - c) a revised conceptual site model; and
 - d) a revised assessment of the risks posed from contamination at the site to relevant receptors, including: human health, ground waters, surface waters, ecological systems and property (both existing and proposed).

All site investigations must be undertaken by a competent person and conform with current guidance and best practice, including BS10175:2011+A1:2013 and CLR11.

- 4) Contaminated Land: Remediation

The change of use hereby permitted shall not take place until a detailed remediation method statement (RMS) has been submitted to, and approved in writing by, the LPA. The RMS must include, but is not limited to:

- a) details of all works to be undertaken including proposed methodologies, drawings and plans, materials, specifications and site management procedures;
- b) an explanation, including justification, for the selection of the proposed remediation methodology(ies);
- c) proposed remediation objectives and remediation criteria; and
- d) proposals for validating the remediation and, where appropriate, for future maintenance and monitoring.

The RMS must be prepared by a competent person and conform to current guidance and best practice, including CLR11.

5) Contaminated Land: Implementation of remediation

Prior to any occupation or use of the approved development the RMS approved under condition 2 must be completed in its entirety. The LPA must be given two weeks written notification prior to the commencement of the remedial works.

6) Contaminated Land: Validation

A validation report must be submitted to and approved in writing by the LPA prior to any occupation or use of the approved development. The validation report must include, but is not limited to:

- a) results of sampling and monitoring carried out to demonstrate that the site remediation criteria have been met;
- b) evidence that the RMS approved under condition 2 has been carried out competently, effectively and in its entirety; and
- c) evidence that remediation has been effective and that, as a minimum, the site will not qualify as contaminated land as defined by Part 2A of the Environmental Protection Act 1990.

7) Contaminated Land: Unexpected contamination

In the event that contamination which has not already been identified to the LPA is found or suspected on the site it must be reported in writing immediately to the LPA.

Unless agreed in writing by the LPA occupation shall not take place until this condition has been complied with in its entirety.

An investigation and risk assessment must be completed in accordance with a scheme which is subject to the approval in writing of the LPA. The investigation and risk assessment must be undertaken by competent persons and conform with prevailing guidance (including BS 10175:2011+A1:2013 and CLR11) and a written report of the findings must be produced. The written report is subject to the approval in writing of the LPA. Where remediation is necessary a detailed RMS must be prepared and is subject to the approval in writing of the LPA. The RMS must include detailed methodologies for all works to be undertaken, site management procedures, proposed remediation objectives and remediation criteria. The approved RMS must be carried out in its entirety and the LPA must be given

two weeks written notification prior to the commencement of the remedial works.

Following completion of the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation must be submitted to and approved in writing by the LPA.

8) Details of manoeuvring and parking

Prior to occupation details of the areas to be provided for the manoeuvring and parking of vehicles shall be submitted to and approved in writing by the LPA. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.

9) Refuse and recycling

Prior to occupation details of the areas to be provided for storage of Refuse/Recycling bins shall be submitted to and approved in writing by the LPA. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.

10) Ecology mitigation

The hereby approved change of use must be undertaken in accordance with the ecological avoidance, mitigation, compensation and enhancement measures identified within the Preliminary Ecological Appraisal and Bat Survey Report (Greenlight Environmental, August 2017).

END OF CONDITIONS