



Appeal Decision

Site visit made on 14 October 2020

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2021

Appeal Ref: APP/J0405/W/20/3250275

Barn at Oakwood Farm, Rowden Lane, Mentmore, LU7 0QD

- 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 D. Harris-Smith against the decision of Aylesbury Vale District Council (which subsequently merged with other local authorities on 1 April 2020 to become Buckinghamshire Council).
 - The application Ref 20/00325/COUAR dated 28 January 2020, was refused by notice dated 24 March 2020.
 - The development proposed is prior approval of proposed change of use of agricultural building to a dwellinghouse (Use Class C3) and associated operational development.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Paragraph Q 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 a dwellinghouse (Use Class C3) and associated operational development at the barn at Oakwood Farm, Rowden Lane, Mentmore, LU7 0QD in accordance with the terms of application Ref 20/00325/COUAR dated 28 January 2020, subject to the conditions in Paragraph Q.2(3) and Paragraph W(12)(a) of the GPDO.

Application for costs

2. An application for costs was made by Mr D Harris-Smith against Aylesbury Vale District Council. This application is the subject of a separate decision.

Preliminary matters

3. In considering proposals for development under Class Q of the GPDO, a determination must first take place as to whether the proposal constitutes permitted development. In the event that it does, Paragraph Q.2(1) of the GPDO requires the local planning authority to assess the proposed development on the basis of; - (a) its impact on transport and highways; (b) its impact on noise; (c) contamination risks on the site; (d) flooding risks on the site; (e) whether the location or siting of the building makes it otherwise impractical or undesirable for it to change from an agricultural use to a Class C3 dwellinghouse; and (f) the design or external appearance of the building.
4. I recognise that the range of prior approval matters to be considered has been recently amended by the Town and Country Planning (Permitted Development

and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 to include whether there is provision of adequate natural light in all habitable rooms of the dwellinghouses. However, in the case of planning appeals, this only applies where the prior approval application was submitted on or after 1 August 2020, which is not the case for the scheme before me.

5. Applications for prior approval are not determined in accordance with the development plan. Schedule 2, Part 3, Paragraph W(10) of the GPDO states that when determining a prior approval application, the local planning authority must; (a) take into account any representations made to them as a result of consultation; (b) have regard to the Framework¹ insofar as relevant to the subject matter of the prior approval; and (c) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land.

Main issue

6. There is no dispute between the Council and appellant that the proposal constitutes permitted development and on the basis of the evidence before me, I see no reason to disagree with this conclusion. The main issue relates to one of the prior approval matters to be considered under Paragraph Q.2.(1), namely, whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from an agricultural use to a use falling within Class C3 (dwellinghouses), with specific regard to the impact of noise, odour and insects on the living conditions of future occupants of the proposed dwellinghouse.

Reasons

7. The appeal site contains a modern agricultural barn constructed in 2008 of a steel portal frame clad in dark green metal composite panels on a concrete slab. The building is sited within the open countryside and lies adjacent to a working farmyard to the south that contains a number of large buildings used for poultry farming.
8. The Council and appellant have both referred to Paragraph 109 of the Planning Practice Guidance in their submissions². This states, among other things, that the location of the building to be converted may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.
9. Paragraph 109 does not define what constitutes an intensive poultry farming building. As a consequence, I do not agree with the appellant that such a use can only be considered intensive if it accords with the interpretations referred to by them, such as that provided by the Environment Agency. Nevertheless, having had regard to the evidence before me and my observations on-site, it is my view that while the poultry operation is significant and large-scale, I do not consider it to be so substantial that it can be considered intensive.
10. Although the Council's Environmental Health Officer has not raised any objections to the scheme on the grounds of noise, odour and insects, this is on the basis of the noise assessment evidence supplied by the appellant and that the poultry activities are operated in accordance with the submitted odour and

¹ National Planning Policy Framework, Ministry for Housing, Communities and Local Government, February 2019.

² Paragraph: 109 Reference ID: 13-109-20150305, Revision date: 05 03 2015

insect management plan (the 'management plan'). However, the Council states that the noise assessment did not refer to traffic movements by HGV's accessing the site and is also not of the view that a condition could be imposed requiring compliance with the management plan as it would not pass the test of enforceability.

11. I share the concerns of the Council in respect of the enforceability of the planning condition relating to the management plan as it relies on ongoing-daily activities by the farm operator, and in my view it would not be possible to acquire sufficient evidence that a breach had taken place without officers or other interested parties actually being on-site for a prolonged period of time, which I consider impractical. However, I am nonetheless satisfied that such a condition is not necessary in this instance as in my view it would not be in the farm operator's interests to allow poor management of the site given the significant risks this would give rise to, such as degrading the quality of the poultry and eggs they are responsible for rearing and producing, and corresponding subsequent sales to food retailers. Furthermore, a poorly managed site could also give rise to complaints that are dealt with under other regulations, codes and standards, such as those relating to human health, animal welfare, food requirements and pollution control. In reaching this conclusion, I have given significant weight to Paragraph 183 of the Framework which states that planning decisions should assume that other pollution control regimes will operate effectively.
12. Although the Council has not raised concerns about noise emanating from the poultry use inside the buildings or chickens roaming the grounds of the farm, it nonetheless states that the HGV vehicular movements to and from the site would be harmful to the living conditions of future occupiers of the dwelling by reason of noise and disturbance. I recognise that HGVs and farm vehicles attending the site would cause some noise and disturbance given the close proximity of the dwelling to the access road, but on the basis of the evidence before me I do not consider these movements to be so intensive or frequent as to be harmful to living conditions in the dwelling or its amenity areas.
13. That is not to say that I consider the barn to be in a location that I would expect the local planning authority to normally grant permission for, but as Paragraph 109 of the PPG states, this is not a sufficient reason for refusing prior approval. In any event, I would expect there to be some degree of tension between the living conditions of dwellings within rural areas and the amount of noise, odour and pests/insects associated with nearby farming operations, just as would be the case for dwellings in an urban area near to a industrial area.
14. In view of the above, I conclude that the living conditions of future occupiers of the proposed dwelling would not be rendered unsatisfactory by noise, odour and insects, and that the location of the building is not therefore undesirable. The proposal would therefore comply with Paragraph 180 of the Framework which seeks, amongst other things, to ensure that new development is appropriate to its location taking into account the likely effects of pollution on living conditions.
15. Given that I am satisfied that the living conditions of future occupants would be acceptable, I do not consider it necessary to impose a condition restricting the dwelling to an agricultural occupancy. In any event, I consider it extremely

unlikely that the farm owner would seek to sell the proposed dwelling separate to the existing farm operation given the inconvenience and risk this might bring to its activities from a purchaser unfamiliar with life adjacent to a poultry farming operation.

16. Turning to the matter of conditions, aside from those referred to above, I do not consider it necessary to impose any relating to contamination as there is no substantive evidence demonstrating that it is present at the appeal site and the appellant has confirmed that they do not intend to carry out any below-ground works or dismantle the existing slab. As a consequence, the proposed change of use will not result in the site becoming contaminated land as it would not give rise to the disturbance of any contamination in the ground.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed.

Robert Fallon

INSPECTOR