



Appeal Decision

Site visit made on 8 December 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Appeal Ref: APP/Z1510/W/20/3257732

Herongate, Sheepcot Road, Castle Hedingham, Halsted, Essex CO9 3AA

- 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 Andrew Temperton, Wild Boar Properties Ltd against the decision of Braintree District Council.
 - The application Ref 20/00433/COUPA, dated 6 March 2020, was refused by notice dated 30 April 2020.
 - The development proposed is conversion of existing agricultural buildings to create 3 No. dwellings with integral garages.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal is development for which prior approval can be granted, and if so, whether the site would be suitable for residential use with regard to contamination risks.

Reasons

3. There is no dispute that the proposal meets the requirements of paragraph Q.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I have no reason to reach any alternative view and therefore consider that the proposal constitutes permitted development under Class Q, subject to the prior approval of certain matters. These matters are listed in paragraph Q.2.(1) and include criterion (c): contamination risks on the site. No concerns are raised in respect of the other listed prior approval matters and I have no reason to disagree with these findings.
4. Paragraph W(10)(c) of Part 3 of Schedule 2 of the GPDO states that in assessing contamination risks on the site, decision makers must determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site would be contaminated land and if so, refuse to give prior approval. The appellant asserts that there is no evidence of any contamination, no contamination is known about and there is only 'potential' that the land may be contaminated.

5. However, the Council's Environmental Health Officer objected to the proposal on the grounds that the appellant's Phase 1 Environmental Site Risk Assessment Report March 2020 (ESRA) identified moderate risk of contamination at the site and consequent risk to future site occupiers. The ESRA recommended a Phase 2 intrusive ground investigation be undertaken prior to site redevelopment to obtain additional information on the ground conditions and the contamination status. The Council considers that this provides sufficient evidence to determine that the land is contaminated, and refusal of prior approval is justified.
6. The appellant considers that this matter could be the subject of a suitably worded condition whereby the further investigations and any required remediation could be carried out prior to commencement of the development. The appellant contends that as the ESRA has indicated 'potential' contamination rather than positively identifying the site as 'contaminated land' that the risk is 'low'. However, this contention conflicts with the findings of its ESRA which clearly identifies the risk as moderate. 'Moderate' risk is described in the report as 'likely' that contamination is present.
7. Whilst Paragraph W(13) states that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval, paragraph W(3) allows the decision maker to require the developer to submit such information as may be reasonably required in order to determine the application, including assessments of impacts or risks and statements setting out how impacts or risks are to be mitigated.
8. I note that the ESRA was originally submitted to the Council in connection with a separate planning application before being submitted as evidence in relation to the prior approval application. In this respect, whilst the ESRA investigates the appeal site, its conclusions are based on an entirely different proposal. One in which the appeal buildings and adjacent dwelling would be demolished, and a new dwelling would be erected. As the appeal proposal would involve conversion of existing agricultural buildings rather than demolition, the associated risks in relation to contaminated land could be different from those assessed. This introduces a level of uncertainty, regarding the likely risk to end users, that reasonably justifies further investigation of contamination risks before allowing prior approval.
9. The appellant has made reference to a site risk assessment carried out by the Council's Environmental Health Officer in 2006 that appears to support its case. That assessment concludes 'no risk evident' of contamination. However, it is also stated that it was an 'observational assessment of the brickwork site alone and based on the use and end users at the time of the visit'. In addition, it is further stated that, 'clearly the introduction of sensitive receptors i.e. residential require [sic] will alter the risk assessment'. As the appeal proposal is related to a future residential use, I do not consider that this evidence lends support to the appellant's case, particularly when considered alongside the findings of the ESRA.
10. I conclude, having regard to paragraph W(10)(c)(ii), that insufficient information has been submitted to satisfactorily demonstrate that the site would be suitable for residential use with regard to contamination risks. The proposal is not therefore acceptable in respect of paragraph Q.2. (1)(c) of Part 3 of Schedule 2 of the GPDO.

Other Matters

11. Interested parties have raised a number of objections to the development, including matters relating to the use of the public right of way, failure to meet design guide standards for shared private drives, insufficient parking provision, impacts on property values, construction traffic and noise disturbance. Notwithstanding that many of the matters raised are not relevant considerations under the provisions of Schedule 2, Part 3, Class Q of the GPDO, as I have dismissed the appeal, I have not considered these matters further.

Conclusion

12. For the above reasons the appeal is dismissed.

S Tudhope

Inspector