



Appeal Decision

Site visit made on 08 December 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2021

Appeal Ref: APP/R3705/W/20/3260060

Poultry Farm, Green End Road, Green End, Fillongley CV7 8PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended 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 GPDO).
 - The appeal is made by Mr J Potter against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2020/0290, dated 10 June 2020, was refused by notice dated 07 August 2020.
 - The development proposed is described as: conversion of existing poultry unit to 5 No. dwellings; materials to include timber boarding, metal roof covering and aluminium windows and doors. The building is located off Gorsey Green Lane.
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Procedural Matter

1. Within the Decision I have removed the phrase 'The building is located off Gorsey Green Lane' from the description, as this does not describe development.

Decision

2. The appeal is allowed, and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the GPDO for conversion of existing poultry unit to 5 No. dwellings; materials to include timber boarding, metal roof covering and aluminium windows and doors, at Poultry Farm, Green End Road, Green End, Fillongley CV7 8PH, in accordance with the details submitted via application Ref PAP/2020/0290, dated 10 June 2020, which includes plans 18.3609.11 Rev E, 18.3609.12 Rev B, 18.3609.13 Rev A, 18.3609.14 Rev A and 18.3609.15 Rev A, subject to the Schedule of Conditions attached.

Application for costs

3. An application for costs was made by Mr J Potter against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Legislative context

4. The proposal is for a change of use of an agricultural building to dwellinghouses (Class C3), and for building operations reasonably necessary for the conversion. Therefore, it relates to Schedule 2, Part 3, Class Q, sub sections (a) and (b) of the GPDO. Such development is subject to the limitations

outlined in paragraph Q.1 and the conditions outlined in Q.2 (including the provisions of paragraph 'W').

Main Issue

5. The main issue is whether it would be impractical or undesirable to change the use as proposed, due to the effect on highway safety, having specific regard to paragraphs Q.2 (1) (a) and (e) of Schedule 2, Part 3, Class Q of the GPDO and the National Planning Policy Framework (the Framework), in so far as it is relevant to the matter at hand. In light of the main issue, the relevant sections of the Framework are sub paragraph 108 'b', ie development should ensure that a safe and suitable access to the site can be achieved for all users, and paragraph 109, ie development should only be prevented or refused if there would be an unacceptable impact on highway safety or the residual cumulative impact on the road network would be severe.
6. There is no definition of the terms 'impractical' or 'undesirable' in the GPDO. The Planning Practice Guidance (PPG) advises that a reasonable ordinary dictionary meaning of the terms should be applied. Thus, 'impractical' reflects that the location and siting would "not be sensible or realistic", and 'undesirable' reflects that it would be "harmful or objectionable"¹.

Reasons

7. The site comprises a poultry shed located on a land holding to the south-west of the village of Fillongley. The building is sited around 220 m north-west of the existing access, which is positioned near the top of a rise along Gorsey Green Lane, which runs in a south-westerly direction from Green End Road.
8. Green End Road is a classified main road of a width that allows traffic to readily flow in both directions. Beyond the first 50 m or so of Gorsey Green Lane, which is a minor unclassified road, leading up to, and for some distance beyond, the site access, the lane is single vehicle width. Both roads are subject to the national speed restriction of 60 mph. However, due to factors such as the narrow width of the road, the high banks on both sides, bends in the road and the location of the site access near the top of the rise and close to a 'T' junction, I consider that vehicles are highly unlikely to be travelling at such speed within proximity of the site access.
9. The proposal would change the use of the agricultural building to 5 dwellings and carry out associated operational development. Car parking (2 spaces for each residential unit) and turning areas would be provided within the site. The existing access would also be altered by removing the gate posts and cutting back the hedge on both sides, thereby widening the access from 4.6 m to a minimum of 5 m. A hard-bound material would be used to surface the access, replacing the existing compacted but loose material, and it would have visibility splays of 2.4 m x 81 m in the south-westerly direction and 2.4 m x 90 m in the north-easterly direction. The access would serve both vehicles and pedestrians.
10. The appellant has submitted evidence comparing the volume of traffic that could be generated by use of the agricultural building for its current purpose with the volume that could be generated by the proposal. I note that residents in the area are of the opinion that the building does not currently generate the extent of traffic suggested in the evidence. I acknowledge that this may be the

¹ Paragraph: 109 Reference ID: 13-109-20150305, Revision date: 05 03 2015

case. However, the figures provided are the vehicle movements that the agricultural building *could* generate. This average is around 14 vehicle movements per day, whereas the average for the proposal would be between 30-35 movements per day. Hence, the proposal could generate between 16-21 additional vehicle movements per day.

11. An increase in the number of vehicle movements does not in itself make it inevitable that the proposal would not be sensible or that it would be harmful in respect of highway safety due to its location. Whilst residents may be conscious of day-to-day vehicle movements in the area, I note that the Highway Authority (HA) did not object to the proposal. The HA concluded that visibility splays exceed minimum requirements, sufficient on-site parking and turning facilities would be provided, the proposed access improvements overcome previous concerns, the increase in traffic would be small and the removal of vehicle movements associated with the agricultural use would more than mitigate against the increase.
12. In addition, the HA noted that there have been no recorded personal injury accidents on Gorsey Green Lane within the last 3 years, and considered that the proposal meets the requirements of paragraph 108 of the Framework and that there would be no reasonable grounds to refuse the application on the basis of paragraph 109 of the Framework.
13. I have noted above some key features of Gorsey Green Lane, ie narrowness, high banks and bends. It is these features, as well as there not being any footpaths or street lighting along the road, that lead the Council to conclude that the proposal would be impractical and unacceptable. I consider that it is not inevitable that such features would lead to increased accidents for either pedestrians, cyclists or vehicle users. The characteristics of Gorsey Green Lane are like those of many other lanes within the area, and lanes within countryside locations generally, which also have residential properties located along them. I am not aware that there is a disproportionate number of personal injury accidents on such roads, to either pedestrians, cyclists or vehicle users.
14. Additionally, the Council note that there is another poultry building located not far from the access, and vehicle movements associated with this agricultural building would continue. Although this would be the case, I consider the nature of the access as proposed, the positions of the remaining agricultural building and the appeal building, and the size and quality of the track serving the buildings are factors that would allow for a shared use of the access to operate safely for all users.
15. Therefore, having regard to the site specific circumstances, the nature of the surrounding transport network, the proposed alterations to the existing access, the relatively small-scale nature of the proposal and likely limited increase in vehicle movements, conditions Q.2 (1) (a) and (e) of Schedule 2, Part 3, Class Q of the GPDO and relevant policies in the Framework, I conclude that the proposal would provide a safe access for all users and that location of the building would not make it impractical or undesirable to change from an agricultural use to a use falling within Class C3, dwellinghouses.

Other Matters

16. Representations were submitted to the Council during the application process and some have been submitted with the appeal. Most of the concerns raised

relate to highway safety issues, which has been addressed above. The other issues raised relate to development in the Green Belt, the relevance of Local Plan policies, air pollution, noise pollution, insufficient local services, the effect on wildlife, the effect on the equestrian business close to the site, flooding and setting a precedent for converting other farm buildings to dwellings in the area. Also, an approval for conversion of the appeal building to dwellings, Ref PAP/2020/0175, has already been approved, but with an access running north-east of the appeal building to directly join Green End Road, which is considered to be safer than the proposed access.

17. Other than transport and highways impacts and the issues of 'impractical' or 'undesirable' addressed above, the legislation requires the applicant to establish whether the prior approval of the local planning authority is required for matters related to noise impacts, contamination, flood risks, design or external appearance of the building and levels of natural light to habitable rooms. I emphasise that the GPDO legislation is separate from the system of determining planning applications having regard to development plan policies and other material considerations. Hence, local and national policies related to Green Belt and local infrastructure do not apply. Also, the fact that an approval to convert the building has been granted using a different access is not a consideration. The proposal must be determined based simply on whether it does or does not meet the requirements of Schedule 2, Part 3, Class Q of the GPDO, having regard to the Framework where relevant.
18. Consequently, of the issues raised, the only additional ones that are required to be considered by the legislation are noise impact and flooding. Given that the site is not close to other residential properties and the proposal is relatively small-scale, I consider that it would not have any adverse impacts on the living conditions of occupiers of properties in the area in respect of noise disturbance. Also, bearing in mind the limited operational development that would be undertaken on site and the fact that the site is located within a low risk flood zone, I consider that the proposal would not increase the risk of flooding in the area.
19. In respect of wildlife, I note that Article 3(1) of the GPDO effectively imposes a pre-commencement condition on all development that is permitted within Schedule 2 of the GPDO that would affect a European protected species or habitat. Development permitted by the legislation cannot lawfully begin until the developer has made a Regulation 77 application and the LPA is satisfied that the development would have no adverse effect on the integrity of such species or habitat.

Conditions

20. In considering conditions I have had regard to those suggested by the Council, the requirements of the legislation - noting that sub paragraph W(13) of Schedule 2, Part 3 of the GPDO allows for prior approval to be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval – and guidance within the Framework and the PPG. The wording of any suggested conditions attached may have been altered to ensure they meet the relevant tests.
21. Approval is granted in accordance with the details submitted with the application, which includes the plans specified above. As such, there is no need to list the plans as a condition. Nor is it necessary to attach conditions referring

to works that are not covered by the approval or restricting works to only those specified in the details. The details of the application, including the plans, identify the works approved. Should any works be undertaken that are not approved and require planning permission, the Council has the necessary powers to address such matters.

22. I have not attached conditions suggested by the Council in respect of the following: installing electric vehicle charging points; requiring details of external lighting; burning materials on site; specification of gas boilers; odour assessment; landscaping details or specifying that the Green End Road access is the only one that can be used. In summary, this is because I do not consider these matters to be either reasonably related to the subject matter of the approval or necessary.
23. Condition Q.2(3) of Schedule 2, Part 3, Class Q of the GPDO requires the development to be completed within a period of 3 years from the date of approval. Consequently, there is no need to repeat this as a condition.
24. Although some external materials are referred to in the details, I have attached conditions related to external materials to ensure that the external appearance of the building is acceptable, as I consider the details provided are not specific enough. I have attached conditions requiring assessment of land contamination in the interest of public health. I have attached conditions regarding the access, parking and turning areas in the interest of highway safety. I have attached a condition restricting the hours of construction and associated deliveries to the site to minimise the noise impacts of the development. Finally, I appreciate that the design and external appearance of the building is important within its context. I have not attached a condition removing particular permitted development rights, however, as development under Classes A-E of Part 1, Schedule 2 of the GPDO, would not be permitted as the use of the building as dwellinghouses would have been granted by virtue of Part 3, Class Q of Schedule 2.

Conclusion

25. For the reasons outlined, I conclude that the proposal satisfies the requirements of Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore allowed, and prior approval is granted.

J Williamson

INSPECTOR

Schedule of Conditions

- (1) No works to any exterior parts of the building shall commence until details of the materials to be used for the roof, elevations, doors and windows have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the details approved.
- (2) Except for any demolition or works to the access, no works shall commence until an assessment of the risks posed by any contamination has 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 a survey of the extent, scale and nature of contamination and any potential risks to human health.
- (3) No development shall take place where (following the risk assessment referred to in condition 2) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has 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 any of the approved dwellings are occupied.
- (4) Demolition, construction works or associated deliveries to the site shall take place only between the hours of 08:00 to 18:00 on Monday to Friday, 08:00 to 13:00 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- (5) No dwelling shall be occupied until the access off Gorsey Green Lane and the adjacent section of the access track has been altered. The access point shall be no less than 5 m wide; the adjacent track shall be no less than 5 m wide and 15 m long, measured from the near edge of the public highway carriageway extending into the site. This area shall be surfaced with a bound material. Any gates hung across the access shall be positioned as shown on the approved plans and shall be hung so as to open into the site, away from the public highway.

- (6) No dwelling shall be occupied until the parking and manoeuvring areas shown on the approved plans have been laid out and made available for use. These areas shall be retained thereafter without obstruction to their designated purposes.

<<<<End of Schedule>>>>