



Appeal Decision

Site visit made on 5 February 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2021

Appeal Ref: APP/W0340/W/20/3258310

Units 2 and 4, Rowdown Farm, Upper Lambourn RG17 8NF

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Rooksnest Estates Ltd against the decision of West Berkshire Council.
 - The application Ref 20/00973/CLASSR, dated 20 April 2020, was refused by notice dated 18 June 2020.
 - The development proposed is a change of use of units 2 & 4 to flexible commercial use comprising classes B1 (business) and B8 (storage).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO 2015'), for a change of use of units 2 & 4 to flexible commercial use comprising classes B1 (business) and B8 (storage) at Units 2 and 4, Rowdown Farm, Upper Lambourn RG17 8NF in accordance with the application 20/00973/CLASSR made on 20 April 2020, and the details submitted with it pursuant to Article 3(1) and Schedule 2, Part 3, Paragraph R.3(1)(b) of the GPDO 2015. The approval is subject to the condition that the development must begin within a period of 3 years from the date of this decision in accordance with Paragraph R.3 (2) of the GPDO 2015 and subject to the following additional conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan – Rowdown, Upper Lambourn, Hungerford (dated 21 June 2019); and Block Plan – Units 2 and 4, Rowdown Farm, Upper Lambourn.
 - 2) Notwithstanding the details submitted with the application, development shall not take place until details of the stopping-up and abandonment of the existing vehicular access located to the front of Unit 4, as denoted by the green line on the approved block plan have been submitted to and approved in writing by the local planning authority. The submitted details shall include a plan and/or specification related to the reinstatement of the highway verge. The change of use shall not occur until the works have been completed in full in accordance with the approved details. The access shall be permanently stopped up thereafter.

- 3) Development shall not take place until details of the vehicle parking and turning areas have been submitted to and approved in writing by the Local Planning Authority. The change of use shall not occur until the car parking and turning areas have been constructed in accordance with the approved details. The vehicle parking and turning areas shall be retained as such thereafter and be kept available at all times for the parking of vehicles.

Legislative Changes

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 'UC Regulations') came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the 'UCO').
3. The amendments to the UCO revoke Class A (shops) and Class D (non-residential institutions and assembly & leisure) and create a new 'Commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes. Uses such as gyms, nurseries and health centres (previously in use classes D1 Non-residential institutions and D2 Assembly and leisure) are also within Class E. It also includes "any other services which it is appropriate to provide in a commercial, business or service locality".
4. The UC Regulations include transitional provisions which retain the effect of the permitted development rights based on the classes that were in place prior to these regulations coming into force. A building or use will continue to be subject to any permitted development rights that it was entitled to on or before 31 August 2020. These transitional provisions will remain in place until 31 July 2021 when revised permitted development rights will be introduced.
5. Paragraph 4 of the UC Regulations provides that: "If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31 August 2020, that application must be determined by reference to those uses or use classes".
6. In this instance, the application was submitted to the local planning authority on 20 April 2020. Therefore, I must determine this appeal with reference to the use classes which applied in relation to England and were specified in the Schedule to the UCO on 31 August 2020.

Procedural Matters

7. The application for prior approval was made under Schedule 2, Part 3, Class R of the GPDO 2015. Class R permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within Class A1(shops), Class A2 (financial and professional services), Class A3(restaurants and cafes), Class B1(business), Class B8(storage or distribution), Class C1(hotels) or Class D2(assembly and leisure) of the Schedule to the Use Classes Order. In this instance, it is proposed to change the use of two former agricultural buildings to a flexible commercial use comprising Classes B1 and B8.

8. Paragraph R.3 of Class R of the GPDO 2015 states (i) before changing the use of the site under Class R the developer must – (b) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to (i) transport and highways impacts of the development; (ii) noise impacts of the development; (iii) contamination risks on the site; and (iv) flooding risks on the site, and the provisions of paragraph W (prior approval) apply in relation to that application.
9. The Council's decision notice confirms that the matters in contention in respect of this appeal are the transport and highway impacts of the development and flooding risks.

Application for costs

10. An application for costs was made by Rooksnest Estates Ltd against West Berkshire Council. This application is the subject of a separate Decision.

Main Issues

11. The main issues are: (i) whether or not the transport and highways impacts of the development would be acceptable; and (ii) whether the change of use of the existing buildings would be acceptable having regard to the flooding risks on the site.

Reasons

Transport and highways impacts of the development

12. Based on data from the Trip rate Information System (TRICS), the Council estimate that the proposed development could generate an additional 15-59 vehicle movements per day dependant upon the end use of the buildings, when compared to the existing agricultural use of the buildings, which were formerly used for grain storage.
13. Owing to the site's rural location, the parties agree that occupiers of the proposed commercial units would be predominately reliant upon the private motor vehicle. Given the likely increase in vehicle movements generated by the proposed uses, the Council contend that the proposal would represent an unsustainable form of development.
14. In support of their case, the Council have drawn my attention to Policy CS13 of the West Berkshire Core Strategy (2006-2026) (the 'CS'). The policy states development that generates a transport impact will be required to, *inter alia*, reduce the need to travel; and minimise the impact of all forms of travel on the environment and help tackle climate change.
15. The Courts¹ have found that applications for prior approval should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied; the principle of development is established through the grant of permission by the GPDO 2015.

¹ R (oao Patel) v SSCLG & Johal & Wandsworth BC [2016] EWHC 3354 (Admin)

16. Consequently, whilst development plan policies may be relevant to a prior approval case, this is only insofar as they relate to the matters at hand, and, such policies can only act as evidence to support the planning judgment to be made, rather than being the basis of it.
17. In this instance, the permitted development right granted by Class R of the GPDO 2015 does not apply a test in relation to sustainability of location. If such a test were to apply, it would have the potential to frustrate the purpose of Class R, which seeks to increase the supply of commercial buildings through the conversion of agricultural buildings, which by definition are frequently located in the open countryside away from existing settlements. Therefore, it follows that users of such development may not be able to rely on public transport or footpath networks to get to and from work.
18. Indeed, paragraph 84 of the National Planning Policy Framework (the 'Framework') states that "Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport."
19. On my site visit, I observed that the B400 road, which serves the existing farm complex was a quiet road with a low number of traffic movements in either direction. Whilst my visit is a snapshot in time, there is no substantive evidence before me to indicate what I experienced was untypical. Indeed, no technical evidence has been provided by the Council to demonstrate that the B4000 road is at capacity. Consequently, I am satisfied that the additional vehicle movements generated by the proposed development could be safely accommodated by the existing highway network.
20. The submitted site plan shows that the commercial buildings would be served by an existing access off the B4000 road to the rear of the farm buildings. In addition, it shows that an existing access to the front of Unit 4, which has poor visibility of on-coming traffic, would be closed off by fencing as part of the proposal. The Council have raised no objection to the proposed access arrangements. On my site visit, I noted that there was good visibility of on-coming traffic in either direction from the rear access. Therefore, I agree with the Council's position on this matter.
21. For the reasons given above, I conclude that the transport and highways impacts of the development would be acceptable.

Flooding risks on the site

22. Despite the site's location within Flood Zone 1, the Council have expressed concern that ground water levels at the site are potentially very high, which could result in potential uncontrolled surface water run-off onto the highway from the existing rear access.
23. However, no technical evidence has been provided by the Council to substantiate their concerns in relation to ground water levels and potential surface water run-off onto the highway. Nevertheless, even if I were to accept the Council's position on this matter, these would be existing issues at the site, which would continue to arise regardless of whether the appeal buildings were converted into commercial use or remained in agricultural use.

24. Given that the proposal would utilise the existing access and parking area, and, that no alterations are proposed to the respective appeal buildings, it is unlikely that any such issues would be exacerbated by the proposed development. Moreover, no substantive information has been provided by the Council to demonstrate that the development would increase flood risk elsewhere.
25. For these reasons, I conclude that the change of use of the existing buildings would be acceptable having regard to the flooding risks on the site.

Conditions

26. In accordance with Paragraph R.3 (2) of the GPDO 2015, prior approval is granted subject to the condition that the development must begin within a period of 3 years from the date of this decision. In accordance with the requirements of Paragraph W (12)(a) of the GPDO 2015, it is necessary that the development shall be carried out in accordance with the approved plans.
27. In the interests of highway safety, it is necessary to impose conditions requiring details of the stopping-up and abandonment of the existing vehicular access located to the front of Unit 4, in addition to the details related to the parking and turning areas, to be agreed with the Council and constructed accordingly. To preserve highway safety, it is necessary for the agreed works to be completed before the change of use occurs and retained as such thereafter.
28. The Council have suggested a condition related to the installation of an electric vehicle charging point. Paragraph W (13) of the GPDO 2015 states that "The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval". Whilst the provision of electric vehicle charging would contribute to wider planning objectives, such as a reduction in greenhouse gas emissions, the installation of such infrastructure is not a requirement of Class R, nor is it reasonably related to the subject matter of the prior approval. Therefore, such a condition would not meet the tests as laid out in paragraph 55 of the Framework.
29. As part of their appeal statement, the Council explain that the potential uncontrolled run-off from the existing access onto the highway could be addressed with a sustainable drainage system, the details of which could be secured by a planning condition. Given my findings on the second main issue, the imposition of such a condition would be unreasonable.

Conclusion

30. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Christopher Miell

INSPECTOR