



Appeal Decision

Site Visit made on 2 March 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2021

Appeal Ref: APP/A2335/W/20/3264905

Agricultural building in field no 0934 adjoining Bay Horse Road, Wellington View Farm, Bay Horse Road, Ellel, Lancaster

- 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(1) and 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 Russell Sanderson (DST Group) against the decision of Lancaster City Council.
- The application Ref 20/00876/PAA, dated 11 August 2020, was refused by notice dated 24 September 2020.
- The development proposed is a prior approval application for the change of use of agricultural building to 3 dwellings.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of an agricultural building to 3 dwellings at Agricultural building in field no 0934 adjoining Bay Horse Road, Wellington View Farm, Bay Horse Road, Ellel, Lancaster in accordance with the terms of the application, Ref 20/00876/PAA, dated 11 August 2020, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q, paragraph Q.2(1) and subject to the following conditions:
 - 1) Notwithstanding the details indicated on the approved plans and supporting documents, no works to the agricultural building shall take place until the following have been submitted to, and approved in writing by, the Local Planning Authority:
 - Details of dark grey standing seam metal cladding;
 - Details of timber cladding;
 - Details of windows and doors;
 - Details of rainwater goods, soil and vent pipes and flues;
 - Details of any external lighting;
 - Details of boundary treatments;
 - Details of all landscaping and surfacing materials.The development shall then be constructed in accordance with the approved details, and retained as such at all times thereafter.
 - 2) No development shall take place until the works approved under planning permission reference 20/00472/FUL to provide a new access to Bay Horse

Road (including the translocation of the existing hedge) have been undertaken in full. The existing access to Bay Horse Road shall thereafter cease to be used and shall be permanently closed in accordance with the details approved under planning permission reference 20/00472/FUL.

- 3) None of the dwellings hereby permitted shall be occupied until the parking and turning area shown on plans 1514.P.12 and 1514.P13 has been made available for use and has been surfaced in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.
- 4) In the event that any unforeseen contamination is found during the development hereby permitted, it shall be quarantined and reported immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken by a competent person in accordance with a scheme agreed with the Local Planning Authority prior to commencement and, where additional remediation is necessary, a supplementary Remediation Scheme shall be agreed in writing with the Local Planning Authority. The agreed scheme shall be completed before work recommences unless otherwise agreed in writing with the Local Planning Authority. Following completion of the supplementary Remediation Scheme as approved, a verification/validation report and certificate shall be agreed with the Local Planning Authority.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development under Part 2 Class A (gates, fences, walls etc) or Class C (exterior painting) of Schedule 2 to that Order shall be carried out without the express permission of the Local Planning Authority.

Application for costs

2. An application for costs was made by Mr Russell Sanderson (DST Group) against Lancaster City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application form does not contain a description of the proposal, so I have used the description that appears on both the decision notice and the appeal form in the banner header and formal decision above.
4. It is clear from the application form and the appeal submissions that the application relates to part b) of Part Q, as both a change of use together with building operations reasonably necessary to convert the building.

Main Issues

5. The main issues are:
 - (i) Whether the proposal would be permitted development, having regard to whether the curtilage of the building would meet the definition set out within Schedule 2, Part 3, Paragraph X of the GPDO
 - (ii) If the proposal is permitted development under Class Q, whether the transport and highways impact of the development and the design or external

appearance of the building would be acceptable and whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order

Reasons

Permitted development

6. Class Q, Paragraph X of Schedule 2 Part 3 of the GDPO defines curtilage as being a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser. The area shown within the red line on the plans submitted falls within definition b), and is the lesser of the land which would fall within definition a).
7. The matter in dispute is whether the car parking area and access should be considered to be within the curtilage. If so, the curtilage would extend beyond the red line and fall foul of part b), with the result being that it would not be permitted development. There is no further definition of curtilage in this part of the GDPO and no clarification is provided as to what should be considered to be included within the curtilage of a dwellinghouse.
8. In the absence of a definition in the GDPO to demonstrate otherwise, the submission that the appellant has made meets with the requirement of Paragraph X with respect to curtilage. The fact that elements usually associated with residential dwellings would be located outside of what has been defined as curtilage does not alter this compliance with the GDPO.
9. In previous appeal decisions¹, Inspectors have made reference to the inclusion of car parking areas within the curtilage of the resultant residential dwelling(s). However, the GDPO seeks only to define the size of the curtilage and not which elements associated with residential use it must include. Therefore, for the purposes of the determination of this application, I find that the curtilage identified on the plans submitted complies with the requirements of Paragraph X of the GDPO.

Transport and highways

10. The existing access point on to Bay Horse Road has substandard visibility and to improve it would require land which is not shown to be under the ownership of the appellant. However, planning permission has been granted to form a new entrance point further along Bay Horse Road under reference 20/00472/FUL.
11. Paragraph W (13) of Schedule 2 Part 3 of the GDPO states that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The securing of the new access point would be necessary to ensure that the transport and highways impacts of the development were acceptable, and therefore it is reasonable to impose a condition requiring this.

¹ APP/T0355/W/16/3148826, APP/P1425/W/16/3163582, APP/G2815/W/17/3166562 & APP/Y3615/W/17/3168185

12. Likewise, the parking of vehicles on Bay Horse Road would cause conflict with other road users and would not be a satisfactory arrangement to serve the proposed dwellings. It is therefore reasonable and necessary to impose a planning condition requiring the parking area shown on the plan submitted to be provided prior to occupation of the proposed dwellings, and details of its surfacing to be approved first by the Council.
13. There is no objection from the Highway Authority who consider that the proposal would have a minimal effect on vehicle movements over surrounding lengths of the public highway.
14. In the appeal at Sideway Bank Farm, Penrith² the Inspector was not persuaded that the permitted development rights afforded under Class Q could extend to provide a lengthy new driveway and new access. However, that case differs from this appeal case in that planning permission has already been granted for the new access point and the Council has therefore deemed it to be acceptable. In this case therefore, the condition would only be requiring that the planning permission be implemented.
15. Subject to these conditions, I conclude that the transport and highways impact of the development would be acceptable. Consequently, there would also be no conflict with Section 9 of The National Planning Policy Framework (The Framework) where it seeks to promote sustainable transport.

Design and external appearance of the building

16. To function as new dwellings which the permitted development right allows, it is not possible to retain the building in its current form, with no windows and only a very limited number of access points. It is inevitable that there would need to be a degree of change to the design and external appearance of the building which would take its visual appearance away from what is currently a functional agricultural building.
17. At the present time the building is partially clad with metal cladding and partially with timber cladding. The standing seam cladding that is proposed would not be significantly different in its appearance than the existing metal cladding, although it would differ from the timber cladding which is closest to Bay Horse Road. However, it would be broken up by the presence of larch timber cladding and by the glazing on the side elevations. The external materials would be acceptable as both a standalone building and within the surrounding area.
18. The windows and doors proposed in the front and rear elevations would be of a general size and spacing that would be appropriate in the context of the size of the building on which they would be positioned. On both of the side elevations, there would be extensive full height glazing. This glazing would be particularly prominent on the elevation that faces towards Bay Horse Road. Notwithstanding this, taken as a whole the design and external appearance proposed would result in a sympathetic conversion of the building for residential use and it would be appropriate in its surrounding context.
19. I therefore conclude that the design and external appearance of the building would be acceptable. There would therefore be no conflict with Sections 12 and

² APP/H0928/W/15/3005842

15 of The Framework where they refer to achieving well-designed places and conserving and enhancing the natural environment.

Whether impractical or undesirable

20. The Planning Practice Guidance states at Paragraph: 109 Reference ID: 13-109-20150305 that *impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable"*. Returning to the premise that the permitted development rights afforded under Class Q allow for the conversion of agricultural buildings to dwellings, such development would inevitably require the provision of gardens and a parking area.
21. In most instances agricultural buildings will be located in rural areas and there will be an impact upon the countryside from their conversion to residential use. This will be not only from the conversion of the building but from the associated garden areas and car parking. There will also necessarily be lighting associated with a residential conversion building due to the general darkness of the countryside and light emanating from the building in a way that would be unlikely to be comparable to that from an agricultural use.
22. It is difficult to envisage how an agricultural building could be converted without having some degree of impact on the countryside. The prior approval process allows for a consideration to be made as to whether the design and external appearance of the building would be acceptable but beyond that it puts no provisions in place to require that there be no impact from matters such as lighting, gardens or parking.
23. To encompass these as undesirable impacts would be to undermine the objectives of the permitted development right and to stifle its use. Furthermore, the works in this instance, including the gardens and parking area, do not extend in their scope beyond works which are reasonable and necessary for the development to take place. Whilst they would inevitably have some visual impact, they would be appropriate in the context of what is permitted development, namely the conversion of the agricultural building to dwellinghouses.
24. I am not therefore persuaded that these would be impractical or undesirable impacts arising from the location or siting of the appeal building, even noting the findings in the Tarn Lane, Keighley and West Druxton Farm, Launceston appeals³.
25. An interested party has raised concern with respect to the proximity of overhead lines to the appeal site and to possible health implications relating to this. There is however no substantive evidence before me to demonstrate that this should render the siting and location of the proposal as undesirable.
26. For these reasons I conclude that neither the location nor the siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

³ APP/W1145/W/15/3139734 & APP/W4705/W/20/3254772

Other Matters

27. Works relating to existing hedgerows would be associated with the access which has already been approved.

Conditions

28. Q.2(3) sets out that Development under Class Q is permitted subject to the condition that development must be completed within a period of 3 years starting with the prior approval date.
29. A unilateral undertaking relating to the new access has been provided with the appeal but it does not include a plan of the site and therefore is not valid. However, this matter can instead be addressed by the imposition of a planning condition.
30. Conditions requiring the new access approved under 20/00472/FUL and the parking area to be provided are necessary in the interests of highway safety. A condition relating to unexpected contamination is necessary to ensure that there is no risk to the future occupiers of the proposed dwellings in this respect.
31. The removal of permitted development rights to erect enclosures and to paint the building are required to ensure that the visual appearance of the development is not compromised. To ensure an acceptable visual appearance to the building, it is necessary that details of external materials, lighting and landscaping to be used in the conversion of the building and associated works are submitted and approved prior to this element of the works taking place.
32. There is no evidence before me to suggest that the conversion of the building would cause concern regarding flood risk and therefore conditions relating to the drainage of the site are not necessary or reasonable.

Conclusion

33. For the reasons given above I conclude that the appeal, subject to conditions, should be allowed.

Graham Wraight

INSPECTOR