The Planning Inspectorate

Appeal Decision

Site visit made on 13 May

by Steven Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 28th May 2021

Appeal Ref: APP/X1545/W/20/3255117
Old House Farm, Braxted Road, Kelvedon, Essex CO5 9BT

- 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 Mrs Hazel Frood against the decision of Maldon District Council.
- The application Ref: COUPA/MAL/19/01152, dated 1 November 2019, was refused by notice dated 30 December 2019.
- The development proposed is described as the conversion on a barn/ agricultural storage building to a dwelling.

Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of an agricultural building with associated operational development at Old House Farm, Braxted Road, Kelvedon, Essex, CO5 9BT in accordance with the terms of application COUPA/MAL/19/01152 dated 1 November 2019 and the details submitted with it, subject to the attached schedule of conditions.

Procedural Matter

2. The application is described as the conversion on a barn/ agricultural storage building to a dwelling. The Decision Notice describes it as a notification for prior approval for a proposed change of use of an agricultural building to a dwellinghouse (Class C3), and for associated operational development. I have determined the application based on the latter description which I consider more fully reflects the appeal proposal.

Main Issue

3. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO') with particular reference to the agricultural unit.

Application for Costs

4. An application for costs was made by Mrs Hazel Frood against Maldon District Council. This application is the subject of a separate decision.

Reasons

5. Paragraph Q.1(a) of Article 3, Schedule 2, Part 3, Class Q of the GPDO states that development is not permitted if *'the site was not used solely for an agricultural use as part of an established agricultural unit'* on the specified date. The local planning authority (LPA) considers that the 'site' and its sole use applies to the agricultural unit and not just to the application building. It considers that the agricultural unit includes a timber processing yard and therefore the requirement for the site to be in a sole agricultural use is not met.

6. The GPDO refers to the sole use of 'the site' and it differentiates this from its use as part of an established agricultural unit. It cannot mean, therefore, that it is the latter (the agricultural unit) which must be in sole agricultural use. Sole use must refer to the application building.

7. The GPDO gives further clarity to the above when in paragraph X to Part 3 ('interpretation to Part 3') it says, *'site means the building and any land within its curtilage'.*

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8. The appellant has sworn a signed affidavit to the effect that the barn is used in connection with the needs of the farm. In this case, and as a matter of fact and degree, I am not persuaded that just because a non-agricultural use (the log business) is present in the ownership of the appellant that this means that the wider unit ceases to be an agricultural unit.

9. The LPA refers to the possible use of part of the appeal building for egg packing '*until this enterprise ceased in 2014'* and where such a use might be considered to be an industrial use. However, the LPA considers that any such use might be ancillary to the agricultural use and, in any event, it notes that the building was used for the storage of hay at the time of the case officer's visit. It therefore states that it would be '*unreasonable to argue that the barn itself has not been used solely for agriculture'.* I have no evidence before me to disagree.

10. On the evidence that is before me, I conclude that the appeal building was used solely for agricultural purposes in connection with an agricultural unit and that the requirements of the GPDO in this regard are met.

Other Matters

11. The LPA considers that prior approval is not required in relation to transport and highway matters, noise impact, contamination, flood risk or the proposed external appearance of the building (subject to conditions). I have no evidence before me to disagree.

12. The appeal proposal does not include a defined curtilage, though there is no requirement for the appeal application to include it, even though the GPDO defines its maximum limit. The appeal building abuts the access track leading to the timber yard with fields directly opposite and a wooded area to the rear. I find that the timber yard is at a sufficient distance away from the appeal building such that it would not adversely affect the living conditions of future occupiers by visual intrusion or other effects and that a curtilage is not necessary to alleviate any such matters.

Conditions

13. Paragraph W (13) to Schedule 2, Part 3 of the GPDO states that conditions reasonably related to the subject matter of the prior approval can be imposed. Conditions are suggested by the LPA and the appellant has indicated in his final comments on the LPA's evidence that '*the Council have proposed conditions do not raise an issue'* (sic).

14. I have imposed a condition relating to the plans in the interests of certainty.

15. It is necessary to impose a condition relating to the proposed external materials also on grounds of certainty and in the interests of good design.

16. I have imposed a condition relating to the sound insulation of the proposed conversion for reasons of health and quality of life. I have included a condition relating to contamination for the same reasons of minimising impacts upon the health of future occupants and quality of life.

17. It has not been necessary for me to impose the 3-year commencement condition as that is already imposed by the GPDO.

Conclusion

18. For the reasons outlined above, I conclude that the appeal should be allowed subject to the conditions in the following schedule.

Steven Hartley

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in complete accordance with approved drawings:
19_1019_001, 19_1019_002, 19_1019_003, 19_1019_004, 19_1019_005.

2. The external materials used in the development shall be to match those of the existing building unless otherwise agreed in writing by the local planning authority.

3. The development hereby approved shall be carried out in accordance with the recommendations included in the Environmental Sound Survey and Noise Impact Assessment by TGS Acoustics dated 24 August 2019.

4. Notwithstanding the details submitted with this application, no development shall commence, other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures, and any construction until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site whether or not it originates on the site.
The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:
(i) a survey of extent, scale and nature of contamination;
(ii) an assessment of the potential risks to:
• human health,
• property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
• adjoining land,
• groundwaters and surface waters,
• ecological systems,
• archaeological sites and ancient monuments;
(iii) an appraisal of remedial options, and a proposal of the preferred option(s).
This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.