
Appeal Decision

Site visit made on 21 April 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2021

Appeal Ref: APP/P1560/W/20/3265747

Land Rear of Three Elms, Harts Lane, Ardleigh, Essex CO7 7QH

- 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.
 - The appeal is made by Ms J Webster against the decision of Tendring District Council.
 - The application Ref 20/00551/COUNOT, dated 29 April 2020, was refused by notice dated 25 June 2020.
 - The development proposed is prior approval for the conversion of an agricultural building to two dwelling units.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the conversion of an agricultural building to two dwelling units at Land Rear of Three Elms, Harts Lane, Ardleigh, Essex CO7 7QH in accordance with the terms of the application Ref 20/00551/COUNOT, dated 29 April 2020, and the plans submitted with it, subject to the following condition:
 - 1) Prior to first occupation of the development hereby permitted, the entirety of the hedgerow fronting Harts Lane to the east of the approved access shall be removed. Thereafter, there shall be no obstruction to visibility east of the access, greater than 600 millimetres above the adjoining road level, in advance of a line drawn 2.4 metres back from the carriageway edge on the centre line of the access and extending across the frontage of the site.

Procedural Matters

2. The Council's decision notice refers to the Tendring District Local Plan 2007 (LP) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 (the eLP). During the course of this appeal, Section 1 of the eLP has been adopted (the LPS1)¹ and now forms part of the development plan. The Council confirmed that the adoption of the LPS1 does not affect the status of any of the policies referred to in its decision notice. The Council also advised that the adoption of the LPS1 results in a change in its supply of deliverable housing land, such that it is now able to demonstrate a 5 year

¹ Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1 Plan - Adopted 26 January 2021

supply². The appellant was given the opportunity to comment on these matters.

3. Nevertheless, a prior approval appeal 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. Development plan policies may be relevant in prior approval cases, but only insofar as they relate to the matters, and only as evidence to support (rather than being the basis of) the planning judgment to be made. I have determined the appeal on this basis.
4. The appeal site is located within the recognised Zone of Influence of the Stour and Orwell Estuaries Special Protection Area and Ramsar Site. I note that Article 3(1) of the GPDO and Regulation 75 of The Conservation of Habitats and Species Regulations 2017 (the Regs) make it a condition of any planning permission granted by a general development order that any development that is likely to have a significant effect on a European site must not be begun until the developer has made a Regulation 77 application and has received written notification from the local planning authority of its approval of that application. The Regulation 77 application may be submitted and approved after prior approval is given for the development. It is therefore not necessary for me to give this matter further consideration in the determination of this appeal.

Main Issues

5. The main issues are whether the proposal is development for which prior approval can be granted, and if so, whether the transport and highways impact of the development would be acceptable.

Reasons

6. There is no dispute between the parties that the proposal to convert the building to residential use meets the requirements of paragraph Q.1 of Schedule 2, Part 3, Class Q the GPDO. I have no reason to disagree 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 (a) transport and highways impacts of the development which is relevant in this case. No concerns are raised in respect of the other listed prior approval matters.
7. The appeal proposal seeks the use of an established vehicular access and drive to serve two new dwellings. This access currently serves an existing dwelling and agricultural buildings; there is also extant permission for a further two dwellings at the site. The proposal would result in 5 dwellings being served by this access. Although all bird rearing operations at the site ceased more than 10 years ago and the appellant advises those operations could not restart due to subsequent changes to animal welfare legislation, agricultural use of the access continues.
8. Concern is raised that the appellant does not own sufficient land to provide adequate visibility splays in both directions from the access and therefore the proposal fails to meet minimum standards for highway safety. It is clear that visibility eastward from the access is obstructed by the established hedgerow

² Stated as being 6.5 years.

along the site frontage. However, the appellant has suggested a condition could be imposed, if permission were to be granted, to secure removal of the hedge so that a visibility splay in excess of 2.4 metres x 100 metres to the east would be available. The Council has not provided details of the size of splay it requires to meet the minimum standards in this location, nor has it indicated whether or not it considers that removal of the hedgerow would result in satisfactory visibility eastward of the access.

9. Harts Lane is a narrow single track road and no evidence has been submitted of existing highway safety issues, in relation to the use of this access, despite the position of the hedgerow. The Council did not raise concerns with the access in respect of the two permitted dwellings at the site, although highway safety was a reason for refusal of an earlier application for four dwellings at the site. However, I have no evidence before me to indicate that removal of the hedgerow was given consideration in that instance and therefore, I do not consider that decision to carry any more than limited weight in the determination of this appeal.
10. I consider that the removal of the hedgerow would result in significant improvement in eastward visibility along what is a fairly straight section of Harts Lane. Even if overall the development were to result in an increase in vehicular movements from that which currently exist, or could potentially occur with continued or increased agricultural movements, I am satisfied that the proposal would not result in unacceptable harm to highway safety. It would be necessary to ensure that the visibility splay provided was not obstructed in the future and this could be secured by the imposition of a condition.
11. I am also satisfied that the removal of the hedgerow would not result in unacceptable harm to the character and appearance of the area, as more open frontages are a feature within Harts Lane. In any case, new planting could be provided further into the site beyond the proposed visibility splay.
12. Visibility westward of the access is good, however, this occurs across land outside of the appellant's ownership. Nevertheless, although the appellant does not have control over this land, there is no substantive evidence to indicate that visibility to the west would be endangered in the future by any obstruction being introduced outside of Harts Lodge. To do so would compromise the visibility of users of the access to that property, which seems to me unlikely.
13. For these reasons, I conclude that the transport and highways impact of the development would be acceptable.

Other Matters

14. I have had regard to the further concerns raised by the Parish Council, including the need for the proposed development and its location outside of the defined settlement boundary. However, because approval is granted in principle under Class Q, the proposal is not the subject of development plan policy as would be the case with an application for planning permission. Therefore, whilst there might be no demonstrated need for this number or type of housing in the locality, this factor would not weigh against prior approval being granted. The national Planning Practice Guidance (PPG) clarifies³ that the Class Q permitted development right does not apply a test in relation to

³ 1 Paragraph: 108 Reference ID: 13-108-20150305 Revision date: 05 03 2015

sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. In this case, accessibility to services and facilities would be insufficient grounds for me to find the location either impractical or undesirable for the change of use to residential. 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 National Planning Policy Framework (the Framework) where relevant.

Conditions

15. Paragraph W (13) of Schedule 2 Part 3 of the GPDO states that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. I have considered the two conditions suggested by the Council in light of the Framework and the PPG. Paragraph Q.2 (3) of the GPDO requires that the development must be completed within a period of 3 years from the date of this decision. Therefore, there is no need for this to be imposed as a separate condition. There is also no need for a condition requiring the development to be carried out in accordance with the details provided in the application, as this is a requirement of the GPDO.
16. The securing of the visibility splay would be necessary in the interest of highway safety. This is related to the subject matter of the prior approval and it is therefore reasonable to impose a condition in this regard.
17. The appellant has suggested a condition to prevent the agricultural use of any of the remaining agricultural buildings at the site in order to limit the vehicular use of the access. However, I do not consider this necessary, as I have found the improvements to visibility from the access, that would result from the removal of the hedgerow, would provide satisfactory highway safety conditions even when considering the actual and potential intensified use.

Conclusion

18. For the reasons given above, 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.

S Tudhope
Inspector