

Appeal Decision

Site visit made on 9 November 2021

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Appeal Ref: APP/M2372/W/21/3277765

Higher Hill Farm, Higher Hill, Tockholes, Darwen BB3 0NU

- 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 Mr L Thomas against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/21/0197, dated 24 February 2021, was refused by notice dated 29 April 2021.
 - The development proposed is the change of use from an agricultural building to 2 No. dwellinghouses (C3).
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 17 November 2021.

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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use from an agricultural building to 2 No. dwellinghouses (C3) at Higher Hill Farm, Higher Hill, Tockholes, Darwen BB3 0NU in accordance with details submitted pursuant to Article 3(1) and Schedule 2, Part 3, Paragraph Q.2(1) of the GPDO through application Ref 10/21/0197, dated 24 February 2021, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is whether or not 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 (GPDO), having regard to both the use of the site and the works proposed.

Reasons

Use

3. Class Q sets out criteria relating to the use of a site for development to be permitted by the class. In a case such as this, which is not currently in active agricultural use, development is not permitted by the class if the site was not used solely for an agricultural use as part of an established agricultural unit when it was last in use.

4. Evidence suggests that the site was in agricultural use in 2000, but that this use ceased when the site was sold to the appellant in 2002, separately from the rest of the agricultural unit. Since then, there have apparently been intermittent non-agricultural uses of the building, but the issue is whether those uses amount to a material change of use, such that the building no longer benefits from the permitted development rights under Class Q.
5. The Council suggests that the intervening non-agricultural uses which have taken place meet that threshold and that as such, a material change of use has taken place. They also suggest that it is for the appellant to demonstrate that the lawful use of the site is still an agricultural one. In effect this requires the appellant to prove a negative, to demonstrate that the use of the site has not changed.
6. I accept that site visits, by the Council during their consideration of the prior approval application, and by me during the consideration of this appeal, are snapshots of the use of the site. I also note that during one of the Council's visits, one of those snapshots showed a non-agricultural intervening use and that the appellant does themselves describe various, casual, albeit limited, non-agricultural uses of the building.
7. There is clearly equestrian use in other buildings on the property, and indeed, in part of the building to be demolished. However, the evidence before me does not suggest that this use extended to the appeal site, or that it represents a material change of use of the appeal site itself.
8. On the face of the evidence before me from both the Council and the appellant, the building has been the subject of occasional, casual non-agricultural uses since it was last in agricultural use. However, whilst the balance is a fine one, on the balance of probabilities, I do not consider that any of these uses have been such that a material change of use has occurred, such that the conditions set out in Class Q.1 would not permit the development proposed.

Works

9. Section (a) of Schedule 2, Part 3, Class Q of the GPDO allows for a change of use of an agricultural building to a dwellinghouse. Section (b) of that Schedule allows for the building operations necessary to convert that building. Both sections are subject to a number of criteria. Criterion (i) makes clear that a development would not comply with the regulations if it consisted of building operations other than the installation or replacement of windows, doors, roofs or exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse. The Planning Practice Guidance (PPG) states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling.
10. Given the condition and construction of the existing building, being a substantial structural framework capable of supporting the works required, I consider that the extent of the works outlined as being necessary to create the proposed dwelling would not be so significant that the proposal could not be construed to be a conversion. In light of the relevant case law, I consider that the works required would not be so significant as to comprise a fresh-build rather than the conversion which is allowed for under the Class.

11. The works would therefore not be so significant that they would fall outside of those allowed by Class Q of the GPDO, being outside the extent of what could be considered to be reasonably necessary for the building to function as a dwelling.

Conditions

12. In accordance with the GPDO, development must be completed within three years of the date of this decision and in compliance with the approved plans, so it is not necessary to repeat those conditions in this decision.
13. The Council has objected to the design and external appearance of the proposal, however, have requested a number of additional conditions concerning the materials to be used in the dwellings, details of drainage, landscaping, how any land contamination may be addressed and air quality measures. I consider that these conditions are appropriate and necessary to ensure the satisfactory appearance of the completed development, to ensure that it is properly drained, to ensure that any issues of land contamination are properly addressed and to meet emissions requirements. I am satisfied that the conditions, with tailpieces removed, meet the tests in, and requirements of both the Framework and the Planning Practice Guidance.

Conclusion

14. For the reasons given above I conclude that the proposed works would comply with the relevant criteria of Schedule 2, Part 3, Class Q of the GPDO, that the appeal should be allowed, and prior approval should be granted.

S Dean

INSPECTOR

Schedule of Conditions

1. Prior to the commencement of any above ground works on site, details confirming the colours and finishes of all the external materials to be used in the construction of the development hereby approved shall have first been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter proceed in strict accordance with the approved materials and details.
2. Prior to the commencement of any above ground works on site, a surface and foul water drainage scheme shall have first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be exclusively limited to the following;
 - a) Separate systems for the disposal of foul and surface waters;
 - b) Details of the rate of surface water discharge from the site to any soakaway, watercourse or sewer, including provisions to ensure that the post-development discharge rate does not exceed the pre-development rate (incorporating a climate change allowance of 40%);
 - c) Details of any necessary flow attenuation measures, including the use of SUDS, where appropriate;
 - d) Details of how the scheme will be maintained and managed after completion; and
 - e) A timetable for implementation, including details of any phased delivery.
3. The duly approved scheme shall be implemented before above groundworks are commenced, or within any other timescale first agreed in writing with the Local Planning Authority.
4. Prior to the commencement of any above ground works on site, a detailed landscaping scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be exclusively limited to the following;
 - a) Details of proposals for supplementary landscaping;
 - b) Details indicating the location, arrangement, species, sizes, specifications, numbers, and planting densities of all new planting, and;
 - c) Details confirming the types and extents of any required hard surfacing.The approved scheme shall be implemented in its entirety within the first available planting season following the substantial completion of the development. Any tree/shrub or other planting that is lost, felled, removed, uprooted, dead, dying or diseased or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

5. No development shall commence on site unless and until, a Contamination Method Statement which sets out in detail the method, standards and timing for the investigation and subsequent remediation of any contamination, which may be present on site, has first been submitted to and approved in writing by the Local Planning Authority. The submitted method statement shall detail the following;
 - a) An investigation and assessment to identify the types, nature and extent of land contamination affecting the application site together with the risks to receptors and potential for migration within and beyond the site will be carried out by an appropriately qualified geotechnical professional (in accordance with a methodology for investigations and assessments which shall comply with BS 10175:2001) will be carried out and the method of reporting this to the Local Planning Authority;
 - b) A comprehensive remediation scheme including an implementation timetable, details of future monitoring and a verification methodology (which shall include a sampling and analysis programme to confirm the adequacy of land decontamination); All the agreed remediation measures shall thereafter be carried out in strict accordance with the approved implementation timetable under the supervision of a geotechnical professional and they shall be completed fully in accordance with the agreed measures and timings.
6. Prior to first use of the development hereby approved, two copies of a comprehensive Validation Report shall be submitted to and approved in writing by the Local Planning Authority. The Validation Report shall demonstrate effective remediation in accordance with the agreed remediation scheme and any necessary supplementary information. All the installed remediation must be retained for the duration of the approved use, and where necessary, the Local Planning Authority should be periodically informed in writing of any ongoing monitoring and decisions based thereon.
7. Should contamination be encountered unexpectedly during redevelopment of the site, all works should cease, and the Local Planning Authority should be immediately informed in writing. If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, and agreed in writing by the Local Planning Authority. The development shall thereafter proceed in strict accordance with the agreed details.
8. No development shall commence on site unless and until, a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction phase, and it shall provide for, but not be exclusively limited to;
 - a) The parking of vehicles of site operatives and visitors;
 - b) The loading and unloading of plant and materials;
 - c) The storage of plant and materials used in constructing the development;
 - d) Wheel washing facilities;
 - e) Measures to control the emission of dust and dirt from construction works;
 - f) Measures to control noise and vibrations from construction works;
 - g) A scheme for recycling/disposing of waste resulting from construction works;
 - h) Details of the type, position and height of any required external lighting;
 - i) Details of working hours.

The development shall thereafter proceed in strict accordance with all of the measures detailed within the submitted Construction Method Statement.

9. None of the dwellings hereby approved shall be occupied unless and until, the following air quality mitigation measures have been installed for each dwelling;
 - a) One electric vehicle charging point with a type 2 connector and a minimum rating of 3.7kW 16A, and;
 - b) Gas fired domestic heating boilers that do not emit more than 40mg NO_x/kWh.

End of Schedule of Conditions