
Appeal Decision

Site visit made on 22 February 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal Ref: APP/R1010/W/21/3285912

Mill Pond House, Whaley Road, Langwith, Derbyshire NG20 9HS

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Tim Barker against the decision of Bolsover District Council.
 - The application Ref 20/00499/DETA2R, dated 8 November 2020, was refused by notice dated 13 October 2021.
 - The development proposed is a granny flat and 2 holiday lets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a dwelling.
3. Paragraph Q.2. of the GPDO says such development is conditional that before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to the flooding risks on the site, among others. This matter forms the basis of the Council's reason for refusal.
4. A section of the wider site encompassing a former mill pond is located within the Apsley Grange Conservation Area (CA). Paragraph X of Schedule 2, Part 3 of the GPDO defines 'site' as the building and any land within its curtilage. Furthermore, curtilage means, for the purposes of Class Q; (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.
5. There is a significant distance from the boundary of the CA to the appeal site and its curtilage in this context. The Council have agreed that the appeal site is not located within the CA, which would otherwise preclude it from consideration under the prior approval process as Article 2(3) land. Based on the above, I concur with this conclusion.

6. The appellant has advised that the proposal is now solely for holiday lets. I have assessed the proposal on that basis, albeit that Class Q allows the change of use to a dwelling. For the purposes of this appeal whether a dwelling or holiday let they would still be considered more vulnerable uses in the Planning Practise Guidance¹.

Main Issue

7. The main issue is whether the proposals constitute permitted development under the GPDO, taking account of the relevant limitations and conditions, having particular regard to flooding risks on the site.

Reasons

8. The appeal building is single storey and is currently used for storage in association with the established use of the wider site. The site also includes a detached dwelling and several fishing ponds. Part of the River Poulter runs through the wider site, which is located within Flood Zones 2 and 3.
9. The Planning Practice Guidance (PPG) advises that to assist local planning authorities in their determination of an application as to whether their prior approval is required for a change of use of agricultural buildings to dwelling houses in an area at risk of flooding, the applicant should provide with their application an assessment of flood risk. This should demonstrate how the flood risks to the development will be managed so that it remains safe through its lifetime.
10. The preliminary flood risk assessment (FRA) outlines some of the measures proposed, such as adding drainage channels to the front entrances and raising the floor levels by minimum 300mm above external ground floor level. However, there is no further detail regarding these matters. Furthermore, in the absence of any predicted flood depths at the site, I am unable to determine the acceptability of the flood mitigation measures proposed. Therefore, I can only attribute the FRA very limited weight. Moreover, I note that the Environment Agency (EA), the statutory consultee for cases involving flood risk, objected to its content regardless. This was because it failed to provide sufficient information to enable a suitable assessment of flood risk to potential future occupiers of the property.
11. I understand there is a lack of data held by the EA for the river, which has led to issues in formulating a suitable FRA. However, the onus is on the appellant to demonstrate that the proposal would meet the objectives of the National Planning Policy Framework with regard to flood risk and how the operation of any mitigation measures can be safeguarded and maintained effectively through the lifetime of the development. To enable a suitable FRA, the EA has advised that additional hydraulic modelling should be carried out to inform the flooding risks on the site.
12. Although I understand there may be significant costs associated with such an approach, the appellant has failed to provide an FRA which demonstrates that future users of the development would not be placed in danger from flood risk hazards throughout its lifetime. Moreover, should the FRA identify risk from flooding, mitigation measures may be needed, of which there is also an absence.

¹ Paragraph: 066 Reference ID: 7-066-20140306

13. The appellant states that the maps produced by the EA which are used for planning applications to advise of locations flood risk zones 1, 2 or 3 are flawed. These are mapped aurally nationwide, but at the EA's admittance, these are not 100% accurate. To that end, the appellant argues the appeal building should be within zone 1 and therefore not subject to an FRA. However, there is insufficient information before me to enable this conclusion to be reached.
14. In any event, the appellant has advised that the wider site has flooded before. This was in 2019, although it is claimed this was due to an extraordinary amount of rainfall for that time period. However, the Framework is clear in paragraph 159 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).
15. My attention is drawn to letters to and from the EA relating to planning applications approved for the detached dwelling² and the fish farm³, the latter of which included the building subject to this appeal. While the EA withdrew their objection to the fish farm and advised conditions should be attached to any grant of permission, I understand they maintained their objection to the detached dwelling, which was approved contrary to their advice. In any event, I can only assess the proposal against current guidance, and the objection from the EA as statutory consultee carries substantial weight against the scheme while I have nothing to counter this with regards to an FRA and/or mitigation.
16. A topographical survey undertaken by the appellant demonstrates that the appeal building is located within zones 2 and 3, despite being located on higher elevations than areas of the wider site which site only in zone 2. While I understand the idiosyncrasy, I have insufficient information before me to establish that the dwelling would not be at risk of flooding. Although the appellant advises they de-silt the river themselves in order to alleviate build up which could increase flood risk, this is not an adequate long-term solution to potential flood risk and cannot be relied on in the long term.
17. As per section W.3(b) of Part 3, the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions; in this case Q.2(1)(d) of Schedule 2, Part 3, Class Q. The proposal is therefore not permitted development.
18. Overall, I cannot be satisfied that the flood risk of the dwellings, even if to be used as a holiday let, in this location has been adequately assessed. I cannot therefore be satisfied the proposal would be safe in flood risk terms. I must therefore take a precautionary approach and find the proposal is not acceptable in respect of flooding risks on the site of paragraph Q.2. (1) (d) of the GPDO and contrary to the aims of the Framework and guidance in the PPG.

Other Matters

19. Although the appellant is unhappy with the Council with regards to how the application was dealt with, this has not had a bearing on my assessment of the proposal which was determined based on the evidence before me and with regard to relevant procedures, limitation and conditions as specified in the GPDO.

² 05/00199/FUL

³ 00/00279/FUL

Conclusion

20. I have found the proposal would not meet the conditions of paragraphs Q.2. and W.(3) of the GPDO in respect of the flooding risks on the site. Prior approval is required on this matter, and I have found based on the evidence before me that it should not be granted. The proposal is not therefore permitted development and the appeal should be dismissed.

C McDonagh

INSPECTOR