



Appeal Decision

Site visit made on 21 June 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal Ref: APP/J1860/W/22/3290129

Little Eastbury Farm, Main Road, Hallow WR2 6PH

- 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.
 - The appeal is made by Ms P Halliday & Ms J Brown against the decision of Malvern Hills District Council.
 - The application Ref 21/01874/GPDQ, dated 6 October 2021, was refused by notice dated 2 December 2021.
 - The development proposed is change of use of one agricultural building to one dwelling houses (Class C3) and associated operational development.
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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) for change of use of one agricultural building to one dwelling houses (Class C3) and associated operational development at Little Eastbury Farm, Main Road, Hallow WR2 6PH, in accordance with the application 21/01874/GPDQ made on 6 October 2021, and the details submitted with it, pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 paragraphs Q(a) and Q(b) subject to the following condition:
 - 1) No development shall commence until an assessment of the risks posed by any contamination, shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.

Procedural Matter

2. I have taken the description of development from the Council's decision notice. It simply and adequately describes it.

Main Issues

3. The main issues are:
 - Whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), with regard to Paragraph Q(a) whether the appeal site is an agricultural building and Q(b) building operations reasonably necessary to convert the building; and
 - The transport and highway impacts of the development.

Reasons

Whether the appeal site is an agricultural building

4. Schedule 2, Part 3, Class Q of the GPDO permits development consisting of Q(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule of the Use Classes Order, or Q(b) building operations reasonably necessary to convert the building.
5. Part 3 of Paragraph X of the GPDO defines an 'agricultural building' as a building used for agriculture and for the purposes of a trade or business. Whether or not the appeal building was an agricultural building on or before the relevant date of 20 March 2013 is a matter of fact and degree based on the evidence submitted and the individual merits of the case.
6. The building was originally used in association with a dairy farm which has subsequently ceased trading and the land sold off. The appellants have provided letters including one from a farmer stating that he used the barn and associated land for cattle grazing and the storage of hay on the relevant date of 20 March 2013.
7. The Council contend that limited weight can be afforded to the letters as they were not witnessed by a solicitor. Whilst not witnessed they are still compelling pieces of evidence indicating that the building was used for no other purpose other than agriculture on the requisite date. Furthermore, the Council do not dispute the contents of the letters, nor have they provided any substantive evidence to counter the appellant's submissions.
8. I acknowledge that the original farm was sold off and land may have been used informally for other purposes, but this does not mean that the lawful use of the barn has deviated from an agricultural one. There is nothing to suggest that an agricultural use or trade could not start up again. Furthermore, I am not aware that planning permission has been granted for an alternative use at the site since 2013.
9. As such, I find that the use of the site has not materially changed from its lawful agricultural use. On the balance of probabilities, the building was lawfully

last used solely for agricultural use in connection with an agricultural unit on the relevant date of 20 March 2013. I, therefore, conclude that the criteria under Paragraph Q(a) are satisfied and permitted development rights apply to the site.

10. The council have referred to an appeal decision¹ which they consider relevant. Every appeal must be considered on its own merits, as I have done. This decision is not so compelling to lead me to reach a different conclusion on this matter.

Building operations

11. The appeal building is comprised of a structural steel portal frame partly sitting on a concrete floor and part sitting on unmade ground. The building has mezzanine areas supported by steel beams. The building has a utilitarian appearance with sections of breezeblock and corrugated sheets at higher levels. The northern elevation is largely open and existing door and window openings are present in the eastern and southern elevations.
12. The submitted information indicates that the proposed development would retain the existing corrugated sheet cladding and utilise existing openings. The appellant indicates that an internal frame would be constructed to insulate the building.
13. The Planning Practice Guidance (PPG) recognises that for a building to function as a dwellinghouse some building operations will be necessary and should be permitted. Those rights include the installation or replacement of windows, doors, roofs, exterior walls and services. However, it is not the intention to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.
14. The appellant's structural inspection report indicates that all elements of the building are in satisfactory structural condition and the proposals would not require modification of the existing primary structural elements.
15. I acknowledge that the appellant's submission does not go into detail regarding the proposed building operations. However, the work permitted within Class Q can, in some cases, be extensive including demolition, replacement or new walls, doors, windows, roofs and utilities.
16. There is no credible evidence to indicate that the rebuilt wall is structurally unsound or would not be able to take the loading associated with the proposed development particularly given the findings of the structural inspection report.
17. The existing external cladding would be retained and whilst sections have light surface corrosion there is nothing to suggest that they would not provide suitable external sheeting, despite variations in appearance.
18. The proposal would not include a significant level of new construction or new structural elements and would minimise interventions into the fabric of the building by utilising existing openings for the proposed windows and doors. Whilst the works to the north elevation would comprise extensive glazing, there

¹ Appeal Ref: APP/J1860/W/17/3178383

is no evidence to indicate that this would comprise a structural element or that it would require additional structural support. Neither would the building be reduced to an extent that it would be considered a skeletal or minimalist structure. In my judgement, the proposed works would not be so extensive to go beyond the normal understanding of conversion. In other words, it would not amount to a substantial re-build or fresh build.

19. Whilst the appellant has not provided information regarding the suitability of the foundations, I am mindful of the PPG which is clear that statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications and is a light-touch process. It is important that a local planning authority does not impose unnecessarily onerous requirements on developers and does not seek to replicate the planning application system.²
20. The Council have referred to appeals at Great Whitley³ and Lower Broadheath⁴ and contend that they are relevant to the scheme before me. However, in these cases the Inspectors took the view that either the existing structures were rudimentary or that the proposed works retained nominal elements of the building. It is apparent that this is not the case in relation to the scheme before me.
21. In respect of the Burnley⁵ appeal the Inspector found that the scheme was not reliant on the existing building and was essentially an independent structure within it. Based on the submitted information I am satisfied that the proposed works would not result in an independent structure or go beyond those permitted under Section 55 of the Act. I note that the existing mezzanines would support the proposed first floor and the existing frame would play a structural and functional role in the development by supporting the existing cladding and roof and the proposed windows and doors.
22. Subsequently, I find that the building is capable of conversion and sufficient information has been provided to demonstrate that the proposed works would not exceed those that would be reasonably necessary to convert the building to residential use.
23. Therefore, the building is already suitable for conversion to residential use and the proposed building operations would not exceed those reasonably necessary to convert the building set out in Q.1(i).

Transport and highway impacts

24. The Council contend that the junction is substandard on account of restricted visibility at the junction of Parkfield Lane and A433 to the north due to the presence of a boundary hedge at No 1 Parkfield Cottages. This section of the A433 is relatively straight in both directions.
25. Whilst the A433 is subject to national speed limit the appellant has undertaken a speed survey which demonstrates that vehicle speeds along this stretch of road are considerably lower than the speed limit. Based on the appellant's highway evidence I am satisfied that adequate visibility can be achieved given

² Reference ID: 13-028-20140306

³ APP/J1860/W/20/3249818

⁴ APP/J1860/W/20/3256392

⁵ APP/Z2315/W/19/3223915

the alignment of the road and the average speed of traffic travelling along it. Furthermore, there is no substantive evidence, before me, of personal injury accidents near to the site. Despite the Council's contention I have not been provided with any evidence to demonstrate that the junction is unsafe resulting in road traffic accidents.

26. Paragraph 111 of the Framework advises that development proposals should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative effects on the road network would be severe.
27. Given the small-scale nature of the proposed development I am satisfied that any additional vehicle movements would not be significant. Based on the evidence before me I am not persuaded that one additional dwelling would tip the balance resulting in an unacceptable impact on highway safety or that the cumulative effect on the road network would be severe.
28. Parkfield Lane is unmade and due to its condition vehicles speeds along it are low. Drivers would have a clear view of the junction and any oncoming traffic and pedestrians. For these reasons it is unlikely that users would be unduly inconvenienced or endangered by the lack of a footway or any increased use of the road.
29. The council have referred to two appeal decisions⁶ for new dwellings along Parkfield Lane which they consider relevant. Whilst I have paid regard to the previous Inspectors conclusions, I am not bound by their decisions. Every appeal must be considered on its own merits, as I have done.
30. I conclude that the transport and highway impacts of the development would not be adverse. Therefore, the proposal complies with the provisions of Q.2(1)(a) of the GPDO.

Conditions

31. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. I have considered the condition suggested by the Council in light of the Framework and the PPG.
32. In the interests of precision, clarity and brevity I have undertaken some rationalisation of the condition suggested by the Council in respect of potential land contamination. The condition is necessary in the interests of safeguarding the living conditions of future occupiers.

Conclusion

33. For the reasons set out above, I conclude that the appeal is allowed and prior approval is granted

B Thandi

INSPECTOR

⁶ APP/J1860/A/12/2187684 and APP/J1860/W/18/3197932