



Appeal Decision

Site visit made on 20 September 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 October 2022

Appeal Ref: APP/F2415/W/22/3297410

Home Farm, Gaulby Lane, Stoughton, Leicester LE2 2FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dhada Motors against the decision of Harborough District Council.
 - The application Ref 21/02129/FUL, dated 30 November 2021, was refused by notice dated 17 February 2022.
 - The development proposed is the 'Conversion of an agricultural building into three residential dwellings'.
-

Decision

1. The appeal is allowed and planning permission is granted for the conversion of an agricultural building into three residential dwellings at Home Farm, Gaulby Lane, Stoughton, Leicester LE2 2FL in accordance with the terms of application Ref 21/02129/FUL, dated 30 November 2021, subject to the conditions set out in a Schedule attached to this Decision.

Applications for costs

2. An application for cost was made by Dadah Motors against Harborough District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description appearing on the Council's Decision Notice refers to the 'Conversion of an agricultural building into three residential dwellings with addition of a first floor, Land To The South Of, Gaulby Lane, Stoughton'. I have retained the use of the original description for the avoidance of doubt. This is because the proposed accommodation lies completely within the envelope of the existing building.

Main Issues

4. The main issues are:
 - Whether the site is suitably located for residential development having particular regard to its location in the countryside and the Thurnby/Leicester/Oadby Green Wedge
 - If the development conflicts with the development plan whether there are any considerations which would overcome the resultant harm.

Reasons

Locations for housing

5. The site consists of a metal-framed former agricultural shed bordered by hard standings, a sloping area overgrown with vegetation to its west, and a shared access track from Gaulby Lane coinciding with a public access bridleway. The land lies close to the village of Stoughton, a small village with limited services to support day-to-day living needs.
6. Policy SS1 of the Harborough Local Plan 2011 to 2031 [2019] (the HLP) sets out the Council's spatial strategy for the delivery of new development including housing. It provides a hierarchy of existing settlements and the appropriate amount of new development to be provided within them commensurate with their sustainability having regard to, amongst other things, their provision of services and ease of accessibility.
7. Stoughton is not a listed settlement and so falls to be considered as an 'Other village or rural settlement' where development will be strictly controlled. Strict control on development in the countryside is also imposed.
8. The Council's reason for refusal refers to Policies GD4 and GD7 of the HLP relating to new housing in the countryside and Green Wedges respectively. The supporting text to Policy GD7 states that 'The policy is more restrictive than countryside policies GD3 *Development in the countryside* and GD4 *New housing in the countryside*, which do not apply in Green Wedges.'
9. Policy GD7 sets out the land uses for which development will be permitted in Green Wedge locations. Residential development is not one of them. Whilst I recognise that there is support for the re-use of rural buildings in Policy GD4 and Paragraph 80 of the National Planning Policy Framework (the Framework), the Council has attributed little weight to this on the basis that the qualifying requirement to enhance the building's immediate setting would not be met.
10. At the time of my site visit, I saw that the building was partially boarded up, subject to some graffiti and the associated land was unmanaged in its redundant state. Although the active use of the site would provide a mechanism to secure its maintenance, any benefit therein would be offset by the domesticated appearance of the site. This would arise due to the associated vehicle parking and amenity spaces which would be readily visible from the adjacent bridleway. Accordingly, I find it would not retain the extent of the existing rural character or therefore provide an enhancement to it.
11. Although the Council accepts that the development would comply with the requirements of Parts 2b-e of Policy GD7, and raises no concerns that the development would conflict with the stated aims of Green Wedges, there would, nevertheless, be a conflict with the policy's limitations to the nature of development to be supported within the Thurnby/Leicester/Oadby Green Wedge.
12. For the above reasons, I find that the development would conflict with the Council's spatial strategy for locations of new residential development. It would thereby conflict with Policies SS1, GD4 and GD7 of the HLP as they seek to direct new housing to the most sustainable locations.

Other Matters

13. In support of the proposed development, the appellant refers me to the fact that Prior Approval¹ for the conversion of the shed to 3 dwellings was granted on 11 November 2021. This was granted under Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). This permission remains extant. It establishes that the building is structurally capable of conversion and can be sympathetically adapted without significant highway implications or contamination risks, amongst other matters. There is little before me to demonstrate that there is reason to depart from those findings.
14. The appellant has indicated that full planning permission is sought for a substantially identical development to assist with financing for self-build mortgages. The fact that the appellant has pursued this provides an indication that efforts to implement the fallback position are afoot and therefore it has more than a theoretical possibility of taking place. A financial limitation to one approach to its implementation would not necessarily be preventative to the delivery of that development.
15. The previous grant of planning permission by virtue of Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO establishes the principle of a residential development of 3 dwellings on the site. Moreover, there is little before me to demonstrate that the proposal would lead to any harm over and above that which might arise from the implementation of the extant permission. Accordingly, I find that the fallback position is entitled to substantial weight.
16. The site lies close to the Stoughton Conservation Area (the CA). There is no dispute between the main parties that the development would not adversely affect the character and appearance of the CA. Pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the proposal and visited the site, I concur with that view. This is due to the presence of an intervening development site and another agricultural shed, and the established vegetation screening at the edge of the CA. Accordingly, it is my view that the development proposed would preserve the character and appearance of the designated area.
17. Concerns have been raised by third parties in respect of the use of the site by wildlife, however, there is little substantive evidence to support those claims. I am therefore unable to attribute significant weight to this argument.
18. I note the apprehension that a positive decision could lead to the future conversion of other buildings. However, precedent is rarely an argument that should carry great weight in planning decisions which should be made on their own merits in the context of the development plan and other material considerations.
19. Taking all of the above together, I have found that the proposals would provide housing in a location that would conflict with the Council's strategic approach to the spatial distribution of new housing. However, it is a well-established principle that the provisions of the GPDO may provide a fallback position. I have found that there is a real prospect of a development under the GPDO

¹ Council reference 21/01696/PDN

taking place and that it would lead to a similar outcome. I therefore find that a strong justification in the context of Paragraph 38(6) of the Planning and Compulsory Purchase Act 2004 exists and it provides clear justification for departing from the development plan in the particular circumstances of the case.

Conditions

20. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
21. In order to reflect the justification for allowing a development in conflict with the development plan, conditions requiring the extent of works to be limited to those previously approved, clarifying the extent of the residential land use and limiting permitted development rights are justified in the circumstances.
22. In the interests of preserving the character of the locality, conditions relating to the treatment of openings on the building, the provision of on-site parking and the landscaping of the site are necessary. To protect the living and working conditions of nearby occupiers, restrictions on site working times are reasonable.
23. A site contamination assessment and if required, its remediation, are necessary in the interests of the health and safety of prospective occupiers and construction workers. This is of necessity a pre-commencement requirement to establish and deal with any hazards to health or the environment prior to works taking place.

Conclusion

24. For the reasons given I conclude that the appeal should succeed.

R Hitchcock

INSPECTOR

Schedule of Conditions to Planning Permission Ref 21/02129/FUL

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location, Proposed Site Plan, Proposed Elevations and Proposed Floor Plan.
- 3) The extent of works required to convert the agricultural building into dwellings shall not exceed that shown on the submitted 'Proposed floor plan and elevations' and detailed in Part 4 of the Building Condition Report (Amet Property).
- 4) The residential curtilage for the dwellings hereby approved is limited to the car parking area and amenity space in accordance with the submitted Proposed Site Plan.
- 5) Prior to their installation, details of the windows, doors and rooflights to be installed shall be submitted to and approved by the Local Planning Authority. Thereafter windows and doors shall be installed in accordance with the approved details.
- 6) Prior to the first occupation of the dwellings a Landscape Scheme shall be submitted to and approved in writing by the Local Planning Authority. The Landscape Scheme shall include full details of proposed hard and soft landscape works; boundary treatments; retained planting/hedges/trees and new planting/hedges/trees and a timetable of implementation. Thereafter, the landscape scheme shall be carried out in accordance with the approved details prior to the first occupation of the dwelling(s). Any trees, shrubs, hedges or plants which, within a period of five years from their date of planting, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation.
- 7) No development shall commence on site until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
 - BS10175:2011+A1:2017 Investigation Of Potentially Contaminated Sites Code of Practice;
 - BS8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs);
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.Or any documents which superseded these.
Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and

- BS 8485:2015+ A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.

Or any documents which superseded these.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004;
- BS 8485:2015 + A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings; and
- CIRIA C735, "Good practice on the testing and verification of protection systems for buildings against hazardous ground gases" CIRIA, 2014.

Or any documents which superseded these.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details.

- 8) Prior to occupation of the completed development, or part thereof, either:
- a) If no remediation was required by the above Risk Based Land Contamination Assessment Condition, a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development, or part thereof, is received and approved in writing by the Planning Authority; or
 - b) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to the whole development, or part thereof, shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:

Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;

Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;

Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;

Contain Test Certificates of imported material to show that it is suitable for its proposed use;

Demonstrate the effectiveness of the approved Remedial Scheme; and include a statement signed by the developer, or the approved agent,

confirming that all the works specified in the Remedial Scheme have been completed.

- 9) The development hereby permitted shall not be occupied until such time as the parking facilities have been implemented in accordance with the Proposed Site Plan. Thereafter the onsite parking provision shall be so maintained in perpetuity.
- 10) Building works, deliveries, clearance or any works in connection with the development shall take place on site between the hours of 0800 – 1800 hours Monday to Friday, 0800 – 1300 Saturday and at no time on Sunday or Bank Holidays.
- 11) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures or works as defined within Part 1 of Schedule 2, Classes A-H and Part 2, Class A inclusive of that Order, shall be erected or undertaken on the dwellings hereby approved or within its curtilage.