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## Appeal Decision

Site visit made on 4 October 2022

**by G Bayliss BA (Hons) MA MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 November 2022**

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**Appeal Ref: APP/G2435/W/22/3299516**

**Bleak House, Oaks Road, Whitwick, Leicestershire LE67 5UP**

- 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 (as amended).
  - The appeal is made by Ms J Moore against the decision of North West Leicestershire District Council.
  - The application Ref: 22/00296/PNA, dated 18 February 2022, was refused by notice dated 8 April 2022.
  - The development proposed is Prior approval notification for change of use of one agricultural building to form two dwellings and for the 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) (the GDPO) for the change of use of one agricultural building to form two dwellings and for the associated operational development at Bleak House, Oaks Road, Whitwick, Leicestershire LE67 5UP, in accordance with the terms of the application Ref: 22/00296/PNA, dated 18 February 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

### Preliminary Matters

2. The application form does not include a description of the proposal. I have taken the description above from the appellant's appeal form, although I have excluded the phrase 'resubmission of planning application 21/00827/PNA' as this does not describe an act of development.
3. It is common ground that the proposal accords with the requirements of paragraph Q.1 of the GPDO, such that it would constitute development permitted under Class Q, subject to the prior approval of a number of matters. For development permitted under Class Q, matters requiring prior approval include the transport and highways impacts of the development.
4. The Council has concerns regarding highway visibility at the access where it joins Oaks Road, and this forms the focus of the appeal. The Council's decision notice also states that the applicant has failed to demonstrate that adequate turning facilities would be provided on site. However, the officer delegated report states that the turning facilities within the site, shown on drawing number 21.4098.07B, are acceptable and this is corroborated by the County Highway Authority (CHA). I have therefore not considered this latter matter.

## **Main Issue**

5. The main issue is therefore whether prior approval should be granted having regard to the transport and highways impacts of the development.

## **Reasons**

6. The appeal relates to an agricultural building on land to the south east of Bleak House. It would be accessed via Oaks Road, a Class C road, subject to a 50mph speed limit. Whilst this is an existing access, the extant use for the building subject to this appeal is for storage purposes only and there is no evidence of any intensive use of this building or of the other agricultural buildings alongside by reason of their limited size. There is no dispute between the parties that the use of one of the buildings as two dwellings would result in a greater number of vehicle movements back and forth along the access and using the junction with Oaks Road. Therefore, the proposed conversion would be an intensification of the use of this access.
7. Concern is focussed on the eastern visibility splay when exiting the site onto Oaks Road. The proposed scheme currently shows an eastern visibility splay of 2.4m X 100m and the CHA consider that this splay should be 2.4m X 160m. The difference of opinion is based around the parameters for calculating the visibility splays and which highway standards should be applied.
8. The speed survey identified the 85<sup>th</sup> percentile speed of traffic approaching from the east to be 46.5mph over the full duration of the survey, with an average of 380 vehicles approaching from this direction during a weekday. To calculate the required visibility, splay the CHA has applied the standards set out in the Leicestershire Highway Design Guide (LHDG) which calculates visibility splays based on Stopping Sight Distances (SSDs) for speeds above 40mph using the parameters for deceleration and reaction time set out within the Design Manual for Roads and Bridges (DMRB). The appellant considers that the standards for visibility splays within Manual for Streets 2 (MfS2) are more appropriate given the characteristics of the road, traffic speed, and the type and volume of vehicles travelling along it.
9. Whilst DMRB standards are predominantly for trunk roads and motorways, they may also be used as guidance for roads where the speed limit is 40mph or above. However, the stringent standards of the DMRB aimed at the Strategic Road Network may not be appropriate for some classified roads which carry lower volumes of traffic than trunk roads, especially in rural areas, even though they may be subject to the national speed limit of 60mph. MfS2 is more recent advice and is generally considered to be more appropriate for roads which are generally busier than residential streets and non-trunk roads. Although it generally provides guidance on SSDs for roads with speeds up to 37mph, it also provides values for much greater speeds. It can be applied to any highway regardless of speed limit and is recommended as a starting point for any non-trunk-road scheme, subject to local context.
10. I visited the site on a weekday, mid-morning, and the weather was dry with good visibility. I observed the passing traffic from the proposed site access for approximately 20 minutes. Oaks Road at this location is rural in character with fields to either side and the road is predominantly level, with a grassed verge and low boundaries to either side. There were no roadside trees in the immediate area obscuring visibility along the road. During this time the road

was lightly trafficked with noticeably fewer vehicles approaching from the east. Most vehicles were cars with a small number of lightweight vans, but I saw no tractors or lorries. There were also several cyclists and walkers on the road. Looking more broadly in the immediate area, I noted other access points to dwellings and field access gates with restricted visibility. Given the characteristics of the road I would expect most road users to drive with care.

11. Oaks Road cannot be regarded as a 'street' as vehicles generally travel more than 40mph, it is not built up and does not have a high place function. However, based on my visit and the evidence before me, this is a lightly trafficked, rural road which doesn't share the characteristics of a trunk road, and the more stringent DMRB standards are not appropriate in this instance. Instead, the MfS2 would be the most appropriate standard as this allows the vehicle type, traffic volumes and site-specific circumstances, as well as vehicle speed, to be factored into the visibility splay assessment.
12. Although the speed survey does not provide a full breakdown of vehicle classes, 7% of vehicles, travelling westbound, were classed as OGV1/Bus. Given the nature of the road, which is neither an HGV or bus route, the number of busses and HGVs are only likely to be a small part of this category with most vehicles being vans and medium sized goods vehicles. Whilst some tractors may be included in this category, the requirement for faster tractors to be able to stop as quickly as HGVs does not set them apart from these vehicles. Given that MfS2 suggests that buses and HGVs do not need to be assessed where they represent less than 5% of traffic flow, the figures therefore suggest that with a predominance of cars and other light vehicles, a shorter SSD would therefore be appropriate in this instance.
13. Whilst the Council has advised that the LHDG indicates that a splay of 160m would be required (based on the advice in DMRB) the Council has also noted that, using the SSD formula in MfS2 and the precise recorded speed, this requirement reduces to 132m. This latter figure is based on the desirable minimum SSD in MfS2. However, MfS2 also provides an absolute minimum SSD figure and in this regard the 100m visibility splay identified in this proposal would comply with this absolute minimum standard. Therefore, as MfS2 is a more appropriate assessment standard in this instance and given the predominance of cars and other light vehicles, I am satisfied that sufficient visibility to the east would be provided.
14. The Council claims that the traffic survey was undertaken during a month which was not traffic neutral. However, this statement is not adequately substantiated by evidence, and I have no reason to consider why this would bring the results of the survey into question.
15. Whilst not forming part of this change of use application, the appellant has suggested that two existing gates on Oaks Road, accessing fields in the appellant's ownership, could be permanently closed. The appellant considers that this would offer some highway safety gains to help mitigate any perceived increase in harm resulting from the proposed development. However, I have concluded that the proposed eastern visibility splay is acceptable, and, in any event, the proposed dwellings would not use these accesses. Although it may be beneficial to close them permanently, they are not pertinent to this decision and such action would therefore not be necessary.

16. For these reasons, I conclude that the proposal would be acceptable with regard to the transport and highways impacts of the development. Accordingly, it would comply with the relevant requirements of Class Q in this regard.

### **Other Matters**

17. The Parish Council objected to the principle of the development due to its location in the countryside and requested tree planting by way of visual mitigation. As this appeal considers a prior approval, the principle of development is not a matter for consideration and mitigation cannot be reasonably secured under this type of application.

### **Conditions**

18. The approval is subject to the standard condition that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2 (3) of the 2015 GPDO. Section W (13) of Part 3 of Schedule 2 of the GPDO also allows conditions to be imposed that are reasonably related to the subject matter of prior approval. A condition requiring the development to be carried out in accordance with the approved plans is necessary in the interests of certainty.
19. I have imposed conditions in relation to facing materials and land contamination as these are matters for which prior approval may be required. The facing materials condition will protect the character and appearance of the area and the contamination conditions require more detailed investigation and any necessary remediation to ensure that the land is fit for purpose.
20. Conditions requiring suitable site access, parking and turning are required in the interests of highway safety.
21. I have made some changes to the Council's suggested conditions in the interests of clarity and consistency, and to ensure compliance with the National Planning Policy Framework and Planning Practice Guidance.

### **Conclusion**

22. For the above reasons, I conclude that the appeal should be allowed.

*G Bayliss*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development shall be completed before the expiration of three years from the date of this decision in accordance with Paragraph Q.2(3) of the 2015 GPDO.
2. The development shall be carried out in accordance with the following approved plans:
  - Proposed Site Plans – Sheet 1 of 3 (1:50) Drawing No.21.4098.07B received by the Local Authority on the 18<sup>th</sup> Feb 2022;
  - Proposed Elevations – Sheet 2 of 3 (1:50) Drawing No.21.4098.08A received by the Local Authority on the 18<sup>th</sup> Feb 2022;
  - Proposed Floor Plan – Sheet 3 of 3 (1:50) Drawing No.21.4098.09 received by the Local Authority on the 18<sup>th</sup> Feb 2022.
3. The external materials to be used in the development hereby permitted shall be in strict accordance with those specified in the application.
4. No development (except any demolition permitted by this permission) shall commence on site until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
  - BS10175:2011+A2:2017 Investigation of Potentially Contaminated Sites Code of Practice;
  - BS 8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs); and
  - Gov.uk Land contamination risk management (LCRM)
  - Or any documents which supersede these.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, no development shall commence on site until a Remedial Scheme and a Verification Plan have been 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:

- Gov.uk Land contamination risk management (LCRM); and
- BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.

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;
- Gov.uk Land contamination risk management (LCRM).
- BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.
- CIRIA C735, "Good practice on the testing and verification of protection systems for buildings against hazardous ground gases" CIRIA, 2014.

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 all approved details and retained as such in perpetuity.

5. Prior to occupation of the completed development, or part to be occupied, and following completion of groundworks, Either:

a) If no remediation was required by Condition 4, a statement from the developer or an approved agent confirming that no previously unidentified contamination was discovered during the course of development, or part thereof, is received in writing by the Planning Authority, or

b) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for all works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to the whole development, or part to be occupied, 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.

If the condition is discharged for part of the site, then reports for the remainder of the site, or additional parts to be occupied, must be submitted and approved in writing by the Local Planning Authority prior to occupation.

6. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on Proposed Site Plans, Drawing No. 21.4098.07B have been implemented in full.

7. The development hereby permitted shall not be occupied until such time as the existing gates to the vehicular access have been permanently removed. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 5 metres of the highway boundary, nor shall any be erected within a distance of 5 metres of the highway boundary unless hung to open away from the highway.

8. The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary and, once provided, shall be so maintained in perpetuity.
9. No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 metres by 100 metres and 2.4 metres by 160 metres have been provided to the east and west of the site access respectively. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
10. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with the details shown on Proposed Site Plans, Drawing No.21.4098.07B. Thereafter the onsite parking provision shall be so maintained in perpetuity.