



Appeal Decision

Site visit made on 17 January 2023

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/A3010/W/22/3305538

**Agricultural Building, Daneshill Road, Torworth, Nottinghamshire
DN22 8RB**

- 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 A Stephenson of Tomlinson Family Trust against the decision of Bassetlaw District Council.
 - The application Ref 21/01206/PDN, dated 26 June 2021, was refused by notice dated 21 February 2022.
 - The development proposed is described as: 'change of use of agricultural building to dwellinghouse (Class C3)'.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been received from A Stephenson against Bassetlaw District Council. That is the subject of a separate decision.

Preliminary Matters

3. I have taken the description and the site address from the appeal form in the interests of clarity.

Main Issues

4. The main issues are:
 - whether the proposed development would be permitted development under Schedule 2, Part 3, Class Q of the GPDO with particular regard to the extent of building operations and demolition that would be carried out; and
 - if so, whether the location or siting of the building would make it impractical or undesirable for it to change from agricultural use to a use falling within Class C3 in terms of its effect on the living conditions of future occupiers, with particular regard to noise and odour.

Reasons

Whether Permitted Development

5. The appeal site comprises of a modern agricultural building. The building consists of a steel frame and comprises seven bays of which three have blockwork lower walls, with four of corrugated sheet. The upper walls of the

gable ends comprise of corrugated sheeting whilst the front and rear elevations are faced with timber boarding. Openings are limited to two large doorways on the south elevation.

6. It is proposed to demolish two of the seven bays of the building. The proposal would include the construction of a wall of corrugated sheeting to form the new east facing gable in place of the demolished section. New windows would be installed in the north, south and west elevations. The provision of windows for natural light and a wall for enclosure would be building operations to the extent reasonably necessary for the building to function as a dwellinghouse. Such works do not fall outside of the permitted building operations listed at Q.1(i)(i).
7. There is no definition in the legislation of 'partial' demolition. The Council argues that the extent of demolition would amount to 28% of the floor area of the existing building. However, this would be significantly below what could be considered to be a total or complete demolition. The proposal would still retain a substantial building capable of providing a large dwelling. I would note there is no evidence that any structural alterations are necessary in order to carry out the change of use and the new wall would utilise the existing steel structure. The existing lower blockwork walls would also remain.
8. Whilst the Council argues that the works would result in a building of a different size and form, this is a likely consequence of the partial demolition of a building, permitted through the GPDO. Furthermore, it is not clear that the demolition is only proposed in order to meet the floor area requirements of the GPDO as the Council suggests.
9. As such, although I accept that a sizeable amount of the existing building would be demolished, the proposal would nonetheless constitute partial demolition to the extent reasonably necessary to carry out the building operations permitted by Schedule 2, Part 3, Class Q of the GPDO. I therefore conclude that the proposal would be permitted development.

Location and Siting

10. The appeal site is located set back to the south of Daneshill Road with woodland located between it and the road edge. It is away from any settlement and within the countryside. Residential development nearby is limited to roadside cottages some distance to the west and a traveller site to the north side of Daneshill Road. A working quarry lies to the east of the appeal site beyond intervening woodland. An existing landfill site lies to the north side of the road, also with woodland between it and the road edge. This is understood to have operated intermittently over a number of years. Open leachate lagoons associated with the landfill site lie within the woodland between it and the appeal site.
11. The appellant has provided a Noise Impact Assessment¹ (NSI). This found no significant adverse effect on future occupiers from noise generated by the quarry but did not assess the likely effect arising from the landfill site. Indeed, no assessment evaluating any noise or odour arising from operations at the landfill site and the likely effect on future occupiers of the proposed dwelling has been provided. The appellant argues that the lack of harm identified in the NSI demonstrates that there would be no harm to future occupiers as a result

¹ Ref DC3516-R1 by Dragonfly Consulting, dated 19 March 2021.

of noise arising from the landfill site. I am not provided with details of the sources of noise at the landfill site, however in my experience, the noise sources and their duration are likely to be different to those within a quarry. The relationship with the appeal site is also different. I am therefore not convinced by this argument.

12. Nottinghamshire County Council (NCC), the Waste Planning Authority, has commented on the appeal application. It sets out that the Daneshill Landfill site was mothballed by the operator in 2017 but resumed operation in August 2021. The site has planning permission to accept household, commercial and industrial waste as well as fine and inert material². The planning permission requires that the deposit of waste materials must cease, and the final restoration of the site completed, on or before 18 May 2048. It is understood that the site also has planning permission until 2023 for the importation, stockpiling and recycling of inert construction and demolition waste materials for use on site or for export off site under three separate planning permissions³.
13. A planning application for a hazardous soil treatment facility on part of the site over a proposed ten year period was undetermined at the time of the NCC comments. The Council has not provided me with any further detail as to the progress of that application. However, it is understood to have been subject to an Environmental Impact Assessment with regard to potential air emissions and release of pollutants.
14. Paragraph W(10)(b) of Schedule 2, Part 3 of the GPDO requires that regard must be had to the National Planning Policy Framework (the Framework) insofar as this is relevant to the subject matter of the prior approval, as if the application were a planning application. Paragraph 130 the Framework, amongst other things, states that planning decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users.
15. Moreover, Framework Paragraph 187 sets out that where the operation of an existing business could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
16. The proposal would introduce a sensitive receptor in the form of a new dwelling in close proximity to the landfill site. Whilst this may not be in full operation at present, it has planning permission to operate until 2048. There is also the potential of a further grant of planning permission through the application under consideration. Full operation could commence at any time with potential for associated disturbance of future occupiers from noise, odour and dust.
17. In the absence of any professional assessment of the effect on the proposed dwelling from a fully operational site, having regard to the relevant planning permissions, I cannot be certain that the proposal would provide adequate living conditions for future occupiers. Moreover, it is also not clear whether any harm, if identified, could be suitably addressed by mitigation carried out before the dwelling is complete in accordance with Framework paragraph 187.

² Ref 1/29/11/00010.

³ Ref 1/18/00217/CDM, 1/18/00218/CDM, and 1/18/00219/CDM.

18. I accept that there will be regulatory limits imposed by the relevant Environmental Permits and the conditions of the planning permissions. However, the operation within those limits does not demonstrate that the appeal proposal would provide adequate living conditions for future occupiers of the proposed dwelling which would not have been taken into account when granting those permissions.
19. It is acknowledged that the trees between the appeal site and the landfill site could reduce the potential for noise and odour arising from the landfill site. However, in the absence of any assessment of odour or noise I cannot be certain that the trees would reduce such emissions to levels that would be acceptable with regard to living conditions.
20. The appellant has provided me with detail of prevailing winds at two airports. The airports are not close to the site, and there is a degree of variation between the two measurements. I therefore cannot be certain that the prevailing wind at the appeal site is consistent with these examples. Nevertheless, even if the prevailing winds at the appeal site were broadly reflective of the measurements provided, the winds would still blow from the landfill site to the appeal site some 13 – 14% of the time. In my experience, noise and odour being blown towards a dwelling with this level of frequency still has potential to severely impact on living conditions. Nevertheless, as I do not have information with regard to the extent of noise and odour likely to be generated by the landfill site when in operation, I am not convinced that adequate living conditions would be afforded to future occupants of the proposed dwelling.
21. The appellant argues that there are properties, namely the roadside cottages and traveller site, that lie closer to the landfill site than the appeal site. I have not been provided with specific distances in that regard. Nevertheless, I have no information as to the history of the relationship between residential properties and the landfill site or details of when the first landfill permission was granted. I would also note that the situations are different. The cottages are positioned on the roadside, adjacent to a large warehouse building for example. As such, in the absence of evidence to indicate otherwise, I am therefore not convinced that the existing properties are directly comparable with the proposed dwelling nor that their presence indicates that the appeal property could be provided with adequate living conditions for future occupiers.
22. For the same reasons, a lack of complaints received by the Council's Environmental Health section since the most recent re-opening of the landfill site in August 2021 is not an indication that the appeal proposal would provide adequate living conditions for future occupiers of the appeal proposal.
23. For the above reasons, I conclude that the location and siting of the appeal building would make it undesirable to change use as proposed due to the likely adverse effects on the living conditions of future occupiers of the dwelling.

Conclusion

24. For the reasons given above I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR