



Appeal Decision

Site visit made on 9 June 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/U2615/W/22/3309355

Barn south of Green Lane, Filby NR29 3HX

- 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 16, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs Green against the decision of Great Yarmouth Borough Council.
 - The application Ref 06/22/0397/PAD, dated 4 May 2022, was refused by notice dated 29 July 2022.
 - The development proposed is described as: Prior approval - change of use of agricultural barn to 1 no. dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr and Mrs Green against Great Yarmouth Borough Council. This is the subject of a separate Decision.

Preliminary Matters

3. Slightly different versions of the site address are used within the application form, decision notice, and appeal form. The site is accessed directly off Green Lane rather than Ormesby Lane, and is separated from the dwelling address of Heath View, so I have simplified it in the banner heading accordingly.
4. The planning application form did not include a description of development, referring to that on the Planning Statement. I have therefore used the description as on the decision notice and appeal form.
5. Schedule 2, Part 3, Paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) states that the Local Planning Authority may refuse a prior approval application where in its opinion the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval, and my determination of this appeal has been made on the same basis.

6. The Council made its decision based on the originally submitted site plan¹ ('the original plan'). A revised plan² ('the revised plan') including a revised red line had been submitted prior to that decision, but the Council did not formally re-consult on this. The same revised plan has been presented to me as the proposed appeal scheme. I address this in detail in my reasoning below, but for clarity, have also based my determination on the original plan submitted.
7. The Council's decision notice refers to the Great Yarmouth Local Plan: Core Strategy 2013 – 2030 ('the CS') (2015), and the Local Highway Authority (LHA) cited the National Planning Policy Framework ('the Framework') (2021). The principle of development is established by the GPDO, and its provisions do not require regard to be had to the development plan or the Framework. Nevertheless, they are material considerations where they relate to relevant matters identified within the GPDO.

Main Issue

8. The main issue is whether the proposed dwelling would comply with the permitted development requirements set out at Class Q of the GPDO, with specific regard to the transport and highways impacts under part Q.2.(1)(a).

Reasons

9. The agricultural site comprises a narrow curtilage around a barn comprised of a steel frame, walls of blockwork and cladding, and cladding for the roof. It is accessed off the single width Green Lane, and surrounded by open fields, with Ormesby Lane dwellings a short distance away. The proposal is for the barn's conversion, comprising the insertion of new openings for doors and windows, and internal works. Other changes are suggested as cosmetic, including the replacement of non-structural cladding and masonry, and landscaping.
10. The 'Procedural Guide: Planning Appeals – England' (2023) advises that the appeal process should not be used to evolve a scheme, as it is important that what is considered by the Inspector is essentially the same scheme that was considered by the Local Planning Authority (LPA) and interested parties at the application stage. Therefore, I have considered if the suggested amendments on the revised plan might prejudice anyone or result in impacts that have not been properly assessed. Based on neighbour objections and the statutory consultee LHA objection, interested parties have not had the opportunity for full comment. Although the LHA's appeal evidence suggests that the revised plan would be acceptable in highway terms, this does not singularly indicate that using this plan as the basis of the appeal would be appropriate.
11. More essentially, I find that the proposed changes would be cumulatively significant amendments. These include an altered red line boundary, changes to the curtilage, amended parking and turning area and visibility splays, that the rear lean-to would be artificially excluded despite being an integral part of the development, and the resulting effect on outlook from that exclusion because the lean-to is only open on one side. While the appellants suggest that the lean-to issues could be addressed by including it within the red line, this would be another iteration of the plan, and again reinforces that the appeal process would be further evolving the scheme. For these reasons in totality, I therefore have based my decision on the originally submitted plan.

¹ Proposed Site Plan & Location Plan HOL-F-N-SL01

² Proposed Site Plan & Location Plan HOL-F-N-SL01E

12. Class Q(a) and (b) of the GPDO permit 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), together with building operations reasonably necessary to convert the building to this use, subject to a number of criteria. Paragraph X of Schedule 2 of the GPDO states that 'curtilage' for the purposes of Class Q, means only 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, 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.
13. While it was not cited within the reasons for refusal, the main parties disagree as to the size of the curtilage and the barn on the original plan. Measurements are not provided on the plans. I therefore cannot on the evidence before me confirm whether the proposal would comply with the curtilage requirements under paragraph X. However, if all other aspects of the GPDO were met, then it would be appropriate to seek further clarification from the parties. I have therefore proceeded first to assess the remaining aspects of Part Q accordingly.
14. Paragraph Q.1 of the GPDO sets the circumstances when development would not be permitted. I see no reason to disagree with the main parties that the proposal would comply with Q.1, except to provide clarification in relation to part i). This sets out that that development is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, to the extent reasonably necessary for the building to function as a dwellinghouse, and partial demolition to the extent reasonably necessary to carry out building operations. 'Reasonably necessary' is a matter of planning judgement.
15. The compliance of the proposal with part Q.1. i) is therefore on the understanding that the existing structure would be retained as the basis for the conversion, including the roof and walls. This is because their removal would not be reasonably necessary, and so would be works which go beyond a conversion if the only element remaining were the frame. Although the appellants' written evidence refers to a cosmetic replacement of the walls and roof, if I were to allow this appeal then the approved plans do show the same walling and roofing materials as existing, and do not identify that the existing materials would be changed. Overall therefore, I am comfortable that on this basis the conversion could be undertaken in accordance with Q.1 part i) of the GPDO.
16. With relation to the conditions set by the GPDO Q.2(1), I similarly conclude along with the main parties that (b) to (g) would be met, subject that the contamination risks under (c) would be secured via the imposition of a relevant condition.
17. Q.2(1)(a) relates to the transport and highways impacts of the development, with issues raised being a lack of parking, turning area, and visibility splays. While the wider site would physically allow for parking and turning space as this already exists, the prior approval process only allows for a relatively small curtilage. Any associated domestic use of the wider site for parking or other uses would thus not be authorised by the prior approval. Although referenced by the appellants, I have no specific evidence before me of an alternate approach being accepted by other Councils.

18. As a result, the access, on-site parking, servicing, and turning provision would not be suitably accommodated. Any displacement of parking including servicing needs would create an obstruction on the narrow width of Green Lane. There are no passing places along this immediate stretch, with the verges restricted by dykes in parts. Notwithstanding the constraints of Green Lane itself restricting vehicle speeds on approach to the site, suitable visibility splays have not been demonstrated. Highway safety would thus be affected.
19. Therefore, I conclude that it has not been demonstrated that the proposed change of use to a dwelling would satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO, with specific regard to the transport and highways impacts under Q.2(1)(a), and therefore is not development permitted by it. The proposed development would not comply with one of the limitations and restrictions specified as being applicable to the proposed development, and consequently, it does not benefit from deemed permission under Class Q.
20. As I have found that the proposal would not meet the requirements under Q.2(1)(a), I have not deemed it necessary to require further information relating to confirmation of curtilage size under Part Q(a).
21. Insofar as the development plan policies and the Framework are material considerations, the proposal would not comply with the CS Policy CS16, or the Framework paragraphs 110b) and 111. These require that new development does not have an adverse impact on the safety and efficiency of the local road network, and that safe and suitable access to the site can be achieved.

Other Matters

22. The site is within the catchment area of The Broads Special Area of Conservation, which is being adversely affected by nutrient pollution. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). It is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of this protected area. However, Regulation 63(1) indicates that the requirement for an appropriate assessment is only necessary where the competent authority is minded to give consent for the proposal. As I have concluded that the appeal should be dismissed, it is therefore not necessary for me to consider this matter further.

Conclusion

23. For the reasons given above and having regard to all other matters raised, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is a development for which an application for planning permission would be required, and cannot be addressed through the prior approval provisions set out under paragraph Q.2(1) of the GPDO. The appeal is therefore dismissed.

L Hughes

INSPECTOR