



Appeal Decision

Site visit made on 17 May 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/N2739/W/23/3314361

Orchard Farm, Braegate Lane, Colton, Tadcaster LS24 8EW

- 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 Rachael Teasdale against the decision of Selby District Council.
 - The application Ref 2022/1180/ATD, dated 7 October 2022, was refused by notice dated 30 November 2022.
 - The development proposed is Part conversion of agricultural building to a 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 the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. Prior approval for the proposal was refused by Selby District Council, which at the time was the Local Planning Authority (LPA) for the area. On 1 April 2023 North Yorkshire Council was created and is now the LPA for the area previously covered by Selby District Council. In my Decision I do not differentiate between the two Councils, given their respective functions as LPA.
4. I have used the appeal site address from the appeal form rather than that in the planning application form in the banner heading above since it provides greater detail about the location of the appeal site.
5. The application form did not include a description of the proposed development. The description in the banner heading above has been taken from the appeal form since it best describes the proposed development in precise and concise terms, although I have deleted some superfluous wording. I have dealt with the appeal accordingly.
6. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits development consisting of: (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); or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in

(a) to a Class C3 (dwellinghouse) use. The proposal would comprise both forms of development under Part 3, Class Q of the GPDO.

Background and Main Issues

7. The Council considers that the proposal does not fall within the scope of Class Q of Part 3 of the GPDO because it relates to the conversion of part of a building, and this opinion forms the substance of its reason for refusal in the decision notice. However, the Appeal Statement provided by the Council supplements its position in respect of the conditions set out at paragraph Q.2. (c) and (e) with which it says the proposal fails to comply.
8. The conditions in the GPDO concern, amongst other things, the practicality and desirability of the location or siting of the building for use as a dwelling, and contamination risks. The appellant expresses concerns that these matters did not form part of the Council's reasons for refusal. However, I am satisfied that the appellant has had the opportunity to address these issues through the appeal process, and given the nature of the proposal, I consider these matters to be directly relevant to the determination of the appeal. I have defined the main issues accordingly.
9. The main issues are:
 - Whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO;
 - If so, whether the location or siting of the building would make the proposal impractical or undesirable in respect of the living conditions of future occupiers; and
 - Whether sufficient information has been provided in relation to contamination risks on the site.

Reasons

Whether permitted development

10. The proposal comprises the conversion of part of an agricultural shed to enable the creation of a dwelling. The remainder of the building would continue to be used for agricultural purposes. The Council's opinion is that it is not the intention of Class Q to allow conversions of buildings in part so as to create mixed uses in the same building. However, this opinion is not substantiated by reference to any specific provisions in the legislation, any explanatory text associated with the relevant statutory provisions, or to the substance and conclusions from any advice it may have taken on the matter.
11. From my reading of the GPDO, and specifically Article 2.(1), it is clear that any reference to a 'building' given in Class Q of Part 3 includes 'any part of a building'. The definition of a 'building' given in Article 2.(1) was drafted such that it does not apply to all Parts or Classes in the GPDO, and I would therefore conclude that Class Q of Part 3 was not excluded from the definition purposely. There are no restrictions, limitations or exclusions given in the GPDO or elsewhere that support the Council's opinion in this case.
12. My interpretation of this provision is consistent with the conclusion reached by my colleague in the appeal decision (Appeal Ref: APP/P1805/W/15/3007943) referred to by the appellant. The proposal would be permitted development

under Schedule 2, Part 3, Class Q of the GPDO. Accordingly, I must now consider whether the proposal complies with those conditions concerning the location or siting of the building and contamination risks.

Living conditions of future occupiers

13. The appeal building is a large modern agricultural shed located in an enclosed yard in an area of countryside characterised by agricultural activity. Access to the site is taken from Braegate Lane, a winding country road which leads to a junction a short distance away with the main road running through the nearby village of Colton.
14. Although the building was largely empty at the time of my visit it was evident that it has been in agricultural use recently, including for the housing of livestock, and the appellant confirms that the building is currently in use as part of a working farm.
15. Access into the building is taken through variously sized doors at the rear, all of which can currently be accessed from wide gated private drives located on either side of the building. These drives lead to a rear yard surfaced with compacted coarse aggregate where there are other detached buildings including stables.
16. The proposal would involve creating a separate curtilage for the proposed four-bedroom dwelling. Creating the new curtilage would involve truncating one of the access drives alongside the building. However, the remaining access drive would continue to enable vehicular access to the rear yard thereby facilitating the continued use of the remainder of the building for agricultural purposes as is proposed.
17. The proposed dwelling would be created using around one third of the space within the existing agricultural shed. Accordingly, it would in effect be attached to the remaining part of that building by two shared internal walls. The new boundary proposed as part of the curtilage of the appeal site would be very close to the rear yard associated with the agricultural building, and the patio doors proposed at ground and first floor of the dwelling, along with its main entrance, would face directly onto that yard.
18. Taking into account the nature of farming, there would be the potential for agricultural activities to take place in the remainder of the shed and in the rear yard at any time of the day or night and for 7 days a week. The Council's evidence shows that an application for the use of the existing shed to house livestock (Council ref: 2010/0801/COU (8/77/44A/PA)) was approved in September 2010. While I have no further information about that application, the use as then proposed appears to be consistent with what I saw during my site visit. I have not been provided with evidence identifying any limitations on that approved use. Consequently, the proposal being attached to the agricultural shed, and the proximity of its curtilage to the adjoining rear yard, has the potential to result in significant disturbance to future occupiers including throughout the night.
19. Insulation and noise attenuation measures could be installed within the proposed dwelling, and fencing could be erected to define the boundaries with the adjoining yard. Those measures could be secured by planning conditions. However, I have not been provided with compelling evidence to demonstrate

that, even with such mitigation measures, the ongoing agricultural use would not adversely affect living conditions in the proposed dwelling from activities in the remainder of the agricultural shed, or those associated with other agricultural activities, including the movement of vehicles and machinery.

20. The Planning Practice Guidance emphasizes that a building being in a location where permission for a new dwelling would not normally be granted is not sufficient reason to refuse prior approval. However, the change may be undesirable if it is adjacent to other uses where harmful or objectionable effects cannot be mitigated, and I have found that to be the case in this appeal.
21. 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) so far as relevant to the subject matter of the prior approval as if the application were a planning application. The Framework supports the Government's objective of significantly boosting the supply of homes. However, this support is not without qualification, including in respect of achieving well-designed places.
22. The proposal would not lead to the creation of places which promote health and well-being with a high standard of amenity for future users. Accordingly, the proposal conflicts with paragraph 130 of the Framework.
23. Paragraph W(3)(a) of Schedule 2, Part 3 of the GPDO provides that the local planning authority may refuse an application where, in the opinion of the authority, the proposed development does not comply with any conditions, limitations or restrictions specified in that Part as being applicable to the development in question. The same provisions apply to the consideration of appeals to the Secretary of State.
24. For the reasons given above, the siting of the building would make the proposal impractical or undesirable in respect of the living conditions of future occupiers of the proposed dwelling and would thereby fail to meet the condition given at paragraph Q.2.(1) (e) of Part 3 of the GPDO.

Contamination risks

25. Paragraph W(10)(c) of Schedule 2, Part 3 of the GPDO requires that the local planning authority must determine whether the site will be contaminated land as described in the relevant legislation. If it determines that the site will be contaminated land, the local planning authority must refuse to give prior approval.
26. The appellant considers it unlikely that the site would have been subject to any contaminants that would prejudice residential use. However, the Council express concerns about the lack of information to justify the appellants position on this matter and, notwithstanding representations made by the Council's advisors on this matter which are set out in the Officer's Report, the appellant has provided no further information to justify their contention.
27. The Council's advisors make it clear that the development would introduce a receptor sensitive to the presence of contamination, and that there is the potential for contamination to be present having regard to the longevity of agricultural uses at the site. I have no reason to disagree with that conclusion. Having regard to these representations and, notwithstanding the Council's

suggested conditions, this is not a matter on which it would be appropriate to defer consideration through planning conditions.

28. The appellant has not demonstrated that the site is suitable for its proposed use taking account of any risks arising from contamination. In this respect the proposal would not accord with paragraph 183 of the Framework. The proposal is therefore unacceptable in that it would introduce a sensitive receptor to contamination risks on the site.
29. Paragraph W(3)(b) of Schedule 2, Part 3 of the GPDO provides that the local planning authority may refuse an application where, in the opinion of the authority, the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in that Part as being applicable to the development in question. The same provisions apply to the consideration of appeals to the Secretary of State.
30. For the reasons given above, insufficient information has been provided in relation to contamination risks on the site to enable prior approval to be granted.

Conclusion

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

David English

INSPECTOR