



Appeal Decision

Site visit made on 16 May 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 28 September 2023

Appeal Ref: APP/M1005/W/22/3311674

1 Grangewood Drive, Milford, Belper DE56 0RW

- 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 Mrs Mable against the decision of Amber Valley Borough Council.
 - The application Ref PDR/2021/0061, dated 14 September 2021, was refused by notice dated 16 September 2022.
 - The development proposed is change of use of agricultural buildings to dwellinghouse.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 GPDO) for the change of use of agricultural buildings to dwellinghouse at 1 Grangewood Drive, Milford, Belper, DE56 0RW in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph Q.2 (1) of the 2015 GPDO through application Ref PDR/2021/0061, dated 14 September 2021. The approval is subject to the 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 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: GS 3, GS 4 and GS 5 dated Jan 2020 and the amended Site Plan received by the local planning authority on the 20 July 2022 in so far as it identifies the proposed curtilage only.
 - 2) No development shall take place until a mitigation and compensation strategy based on the Potential Avoidance, Mitigation and/or Compensation Measures detailed in section 5 of the Nocturnal Bat Survey Report prepared by Elton Ecology July 2023 has been submitted to and agreed in writing with the local planning authority. The agreed strategy shall be implemented in accordance with the timescale set out in the strategy and permanently installed and retained in accordance with the approved details.
 - 3) No development shall take place until the local planning authority has been provided in writing with either:
 - a) A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified development to go ahead (or any Regulations, Orders, or other subsequent replacement standard), or;

- b) A statement from the relevant licensing body to the effect that it does not consider that the specified development will require a licence.

Preliminary Matter

2. In the absence of a clear description of development on the application form, I have utilised the description stated on the Council's decision notice, removing superfluous wording.

Background and Main Issue

3. The application includes details of both the change of use and the building operations necessary to convert the building.
4. The Council considers that the proposal accords with the requirements set out in Paragraph Q.1 of the 2015 GPDO so is permitted development. There is no evidence before me to the contrary.
5. Class Q.2 requires the developer to apply to the local planning authority for a determination as to whether prior approval is required for certain matters, including whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Use Classes Order. The Council refused the application on this basis.
6. The main issue is therefore whether the location or siting of the building would make it impractical or undesirable for it to change from an agricultural use to a use falling within Class C3 (dwellinghouse) of the Use Classes Order, having regard to the access arrangements.

Reasons

7. The building subject to the appeal is an agricultural building situated within a grass field located to the rear of a residential estate. Vehicular access to the existing parking area is provided by an existing driveway that serves 1 Grangewood Drive. The parking area would be sufficient in size and condition to serve both the existing occupiers of No 1 and any future occupiers of the proposal. The parking area is separated from the agricultural buildings by the intervening grass field with a distance identified as between 28-30 metres by the appellant and approximately 28 metres by the Council.
8. The Council contend that this separation between the buildings and the parking area and the lack of a formalised access make the proposal impractical. The appellant provided additional information to the Council setting out that a 1 metre wide path could be provided between the parking area and the buildings. The Council asserted that this would be operational development and would require planning permission because there are no permitted development rights to create a path for residential use within an agricultural field.
9. The Council further contend that the proposal would be likely to result in pressure for the provision of an access which could potentially result in a harmful effect upon the openness of the Green Belt. Paragraph W(10)(b) of Schedule 2, Part 3 of the 2015 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.

10. Guidance on the meaning of the wording impractical or undesirable is given in the Planning Practice Guidance¹ (PPG). The examples given are stringent circumstances, rather than by virtue of falling within a particular designation such as the Green Belt. Moreover, the existence of permitted development rights under Class Q, which apply in the Green Belt, establishes the principle of the proposed development. To suggest that a conversion might be impractical or undesirable by virtue solely of it falling within a designated area would undermine the intended function for which those permitted development rights were established.
11. I witnessed during my site visit that a track has recently been installed between the parking area and the building subject to this appeal, following planning permission² being granted on 27 March 2023. However, the Council have attached a condition to this planning permission to restrict the use of the track. The condition states 'the farm access track hereby approved, shall be used for the purposes of a farm track leading to the agricultural building and for no other purpose'.
12. Article 3(4) of the 2015 GPDO states that nothing in the Order permits development contrary to any condition imposed by any planning permission granted. Therefore, whilst the farm track would still be used for the purposes of leading to the agricultural building, even if it were converted to a residential use, the condition seeks to restrict movements along the track to those of a farm track. Therefore, I do not consider that the recently installed farm track can be relied upon for any future occupants of the proposed scheme.
13. In this case therefore, an assessment must be made as to whether having to walk approximately 28m from the existing parking area across the grass field, alongside the existing farm track, to the building would be impractical.
14. The PPG³ sets out examples of what is impractical. The PPG states that a reasonable ordinary dictionary meaning should be applied in making any judgement and that impractical reflects that the location and siting would 'not be sensible or realistic'. The example given for an impractical conversion in the PPG is where an agricultural building is on the top of a hill with no road access, power source or other services.
15. The proposal here, whilst it is removed from the existing parking area, it is still closely related to it. The appeal building is located in close proximity to other dwellings, meaning that utilities and services are in close proximity. The walk across the grass field would be over relatively flat ground. The building is clearly visible from the parking area and any pedestrian would be guided visually by the presence of the existing farm track which leads directly to the building. I therefore consider that, whilst slightly unusual, particularly given the presence of the existing track, in the context of the PPG, the proposal would not be impractical.
16. In any case, it may be that any future occupiers of the appeal site, following conversion wished to provide a separate access between the parking area and the appeal building, this could be considered permitted development under Schedule 2, Part 2, Class B of the 2015 GPDO which permits the formation,

¹ Reference ID: 13-109-20150305

² Council reference: AVA/2022/1031

³ Reference ID: 13-109-20150305

laying out and construction of a means of access to a highway which is not a trunk road or classified road. The access would need to be required to serve the dwelling but would not be restricted in terms of the length. I have no evidence before me to suggest that this permitted development right has been removed.

17. For the reasons given above, I conclude the location and siting of the building would not make it impractical for it to change from an agricultural use to a use falling within Class C3 (dwellinghouse) of the Use Classes Order having regard to access arrangements.

Other Matters

18. Where there is reasonable likelihood of a protected species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development is understood. I am mindful of the duty on me pursuant to biodiversity under section 40 of the Natural Environment and Rural Communities Act 2006 (as amended).
19. A number of Bat Surveys have been carried out at the appeal site. The third Survey concluded that the building is in use for occasionally used day roosts for different species of bat along with a feeding roost for long-eared bats resulting in a site of local value only for the roosting of bats. The third survey states that prior to works commencing compensatory bat roost provisions must be installed at the site to translocate any bats found away from the building/works area. Mitigation measures are also identified, requiring 3 permanent bat roosting features on the building. External lighting is also identified as needing to be sympathetic due to the presence of bats in the wider landscape.
20. In view of these findings I am satisfied that subject to conditions requiring mitigation measures and Natural England license details, the conversion would not result in an unacceptable impact upon protected species.
21. Interested parties have raised concerns about overlooking and the loss of privacy. The proposal would result in a single storey dwelling which is removed from the nearest neighbouring dwelling by a reasonable distance. I saw that the inter-relationship between the proposed dwelling and neighbouring dwellings would be broadly comparable to that found elsewhere nearby. The siting of the building would therefore not be undesirable in this regard.
22. Concerns have also been raised about the upkeep of the private road and a restrictive covenant. I have seen no evidence regarding the scope or extent of these requirements and how it might affect the implementation of the proposal. There is accordingly nothing before me to indicate that any covenant would provide a fundamental impediment that would affect the scheme, recognising that such arrangements are private legal agreements and not related to the public acceptability of development.

Conditions

23. The Council submitted suggested conditions, were I minded to allow the appeal. I have considered these in light of the Framework and the advice in the PPG.
24. Any change of use granted under Article 3(1) and Schedule 2, Part 3, Class Q of the 2015 GPDO is subject to the condition Q.2 (3) which specifies that the

development shall be completed within a period of 3 years starting with the prior approval date. I have therefore not imposed the timing condition advanced by the Council in that context. I have imposed a plans condition in the interests of certainty.

25. The Council have suggested in part of a condition that permitted development rights under Class A, B, C, D and E of Part 1, Schedule 2 of the 2015 GPDO should be removed. However, development under these classes are not permitted if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class Q of Part 3.
26. The removal of permitted development rights under Class A, Part 2, Schedule 2 of the 2015 GPDO relating to the erection of walls, fences and enclosures was also suggested as part of the condition. Given the permitted development rights in this regard have not been removed for land in the Green Belt and due to the limited scale of the proposal and the limited curtilage area in which a boundary treatment/enclosure could be located around or within, I do not find this part of the condition necessary either.
27. As discussed above, the need for mitigation measures relating to bats need to be agreed with the Council prior to the commencement of development. I have amended the suggested condition provided by the Council in this regard to ensure that it is precise. I have also imposed an additional condition requiring that a copy of the Natural England license or confirmation that one is not required is submitted to the local planning authority in the interests of clarity. These conditions are imposed to ensure that protected species are adequately dealt with.
28. Two informative notes are suggested by the Council relating to the potential for contamination and asbestos. These informatives would have no legal effect and therefore I have not included them in this decision. However, the appellant has in any case had sight of them as they were provided in the Council's officer report.

Conclusion

29. For the above reasons, having taken account of relevant statute, the provisions of the development plan taken as a whole, and all other relevant material considerations, I therefore conclude that the appeal should be allowed.

G Dring

INSPECTOR