



Appeal Decision

Site visit made on 21 September 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/P1560/W/22/3308530

31 Harwich Road, Ardleigh CO11 2LS

- 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) Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order (as amended) 2015.
 - The appeal is made by Mr and Mrs Smith against the decision of Tendring District Council.
 - The application Ref 22/01234/COUNOT, dated 19 July 2022, was refused by notice dated 7 September 2022.
 - The development proposed is application for prior approval for the conversion of two agricultural buildings into two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There was no description of development on the application form. I have therefore used the description used on the appeal form which matches the Council's decision notice.

Main Issues

3. The main issues are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), having regard to the requirements of:
 - Paragraph Q.2(1)(a) in relation to the transport and highways impacts of the development;
 - Paragraph Q.2(1)(c) in relation to contamination risks on the site; and
 - Paragraph Q.2(1)(e) as to whether the location or siting of the buildings make it otherwise impractical or undesirable for the buildings to change from agricultural use to a use falling within Class C3 (dwellings).

Reasons

4. Paragraph Q.2(1) sets out matters to be determined during the prior approval process. 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.

Highways

5. Paragraph 110 of the Framework requires that safe and suitable access to the site can be achieved for all users and paragraph 111 confirms that development should only be refused on highways grounds, insofar as it relates to this appeal, if there would be an unacceptable impact on highway safety.
6. The highway adjacent to the site is a single carriageway subject to a 40mph speed limit. The appeal proposal would utilise the existing access where visibility is restricted to the west by the bridge over the railway line. Consequently, safe and suitable access to the site could not be achieved for all users.
7. There is no substantive evidence before me as to the number of traffic movements generated by the previous use or how this would compare with the proposed development. I do not have full details of the previous appeal¹. However, I note it was in relation to an outline application where access was a reserved matter. As such, I am not satisfied this demonstrates the site access would be acceptable.
8. Curtilage, for the purposes of this appeal, is defined in Paragraph X of Schedule 2, Part 3 of the GPDO as being '(a) 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 (b) 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'. It does not specify what should be contained within that curtilage, or that all elements associated with the proposed development must be located within it. There is a distinction in this respect between an application under Class Q of the GPDO and an application for planning permission. The conclusion reached on one would not bind the other.
9. A substantial open area with hardcore lies around the site, and the provision of parking spaces as shown on the submitted plans would not harm the ability of vehicles to manoeuvre within the site. Were I minded to allow the appeal, the provision of the parking spaces could be secured by a condition.
10. For the reasons given above, I conclude the proposed development would have an unacceptable transport and highways impact. It therefore would not comply with the condition set out at paragraph Q.2(1)(a), Part 3, Class Q of Schedule 2 of the GPDO. While not determinative, it would be in conflict with section 9 of the Framework which requires development to provide safe and suitable access.

Contamination

11. Paragraph 174 of the Framework confirms that new development should not be put at unacceptable risk from or be adversely affected by soil contamination. No substantive evidence of site investigation and assessment of the risk of contamination at the site has been submitted. Notwithstanding the dispute as to the presence of the Shadows Pit historic landfill, the longstanding historic use of the site for agriculture is sufficient for such information to be necessary. Without this, I cannot be satisfied that there would not be an unacceptable risk

¹ APP/P1560/W/20/3248868 dismissed 7 May 2021

from contamination at the site. Decisions of the Council elsewhere would not change my conclusion in this respect.

12. A condition has been suggested should contamination be discovered. However, in the absence of assessment and consideration of any necessary mitigation, a conditional approach would not be appropriate given the potential risks to human health.
13. I therefore cannot be certain that the proposed development would not be at an unacceptable risk from contamination. It therefore would not comply with the condition set out at paragraph Q.2(1)(c), Part 3, Class Q of Schedule 2 of the GPDO. While not determinative, it would be in conflict with and would be in conflict with section 15 of the Framework which requires a site to be suitable for its proposed use having regard to any risk arising from contamination.

Otherwise Impractical or Undesirable

14. The Planning Practice Guidance (PPG)² provides advice on what is meant by impractical and undesirable and that a reasonable ordinary dictionary meaning should be applied in making any judgement and examples are given. It also highlights that starting point is that the permitted development right grants planning permission.
15. The appellant's case is clear that the glasshouses are no longer in agricultural use and my observations at my site visit would not contradict this. No specific harm has been identified by the Council. Furthermore, the examples in the PPG are where there would be very strong reasons why it would be undesirable for a dwelling to be sited in proximity to such uses. Even if the glasshouses were in use for that purpose, they are relatively small in size. This would limit the potential for adverse effects to arise from their use.
16. I therefore conclude there is no reason that it would be otherwise impractical or undesirable for the buildings to be converted. In this respect, the proposed development would comply with the condition set out at paragraph Q.2(1)(e), Part 3, Class Q of Schedule 2 of the GPDO.

Other Matters

17. No conflict with the conditions of paragraph Q.1 of the GPDO have been identified. Nor has any conflict with any of the other prior approval matters set out in paragraph Q.2, namely noise impacts, flooding risks, design and external appearance, and the provision of adequate natural light. However, these would not alter my conclusions on the other prior approval matters.

Conclusion

18. I have found the proposal would satisfy condition Q.2(1)(e) of Class Q and the location or siting of the buildings would not make it otherwise impractical or undesirable for them to change to a use falling within Class C3. However, for the reasons given above, the proposed development would not satisfy conditions Q.2(1)(a) and Q.2(1)(c) of Class Q in relation to the transport and highways impacts of the development and contamination risks on the site. Prior approval is therefore not given, and the appeal should be dismissed.

J Downs INSPECTOR

² When is permission required Paragraph: 109 Reference ID: 13-109-20150305 Revision date: 05 03 2015