



Appeal Decision

Site visit made on 24 July 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2023

Appeal Ref: APP/W0530/W/23/3315204

Avalon Eco Farm, Meadow Road, Willingham, Cambridgeshire CB24 5JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission to carry out development without complying with a condition which has been imposed on a prior approval.
- The appeal is made by Ms Christine Hertoghe against South Cambridgeshire District Council.
- The application Ref 22/01131/S73, is dated 8 March 2022.
- The application sought planning permission for the change of use of agricultural building to 2 No. dwellinghouses (Class C3) without complying with a condition attached to prior approval Ref 21/01820/PRI03Q, dated 9 June 2021.
- The condition in dispute is No 8 which states that:

"Prior to the commencement of any works relating to the change of use of the agricultural buildings a passing place shall be installed on land within the applicants control/ownership along Hemsals Road or Meadow Drove and off of the adopted public highway. A plan showing the passing place shall be submitted to the Local Planning Authority and agreed in writing before the passing place is commenced. The dimension of the required passing place together with the width of Hemsals Road or Meadow Drove (single-track road) shall be 5.5 metres over a length of 5 metres with tapers of 5 metres long provided at each end."

- The reason given the condition is:

"To ensure that the local highway network is adequate to cater for the development proposed."

Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural building to 2 no. dwellinghouses (Class C3) at Avalon Eco Farm, Meadow Road, Willingham, Cambridgeshire CB24 5JL in accordance with the application Ref 22/01131/S73, without compliance with condition number 8 previously imposed on prior approval Ref 21/01820/PRI03Q, dated 9 June 2021 and subject to the conditions set out at Schedule A of this decision.

Preliminary Matters

2. The Council failed to give notice of its decision within the prescribed period, however it has provided evidence that it would have refused the application had it been able to do so. The evidence of the Council and the appellant has informed the main issue.
3. The appeal site is accessed from Willingham by means of a single rural road. This road continues beyond the appeal site to serve further properties, but is,

in effect, a dead-end. This road is referred to by a variety of names within the evidence, including 'Meadow Drove or Hemsal Road', 'Hemsal Road' and 'Meadow Road', either as alternatives or in reference to specific stretches of it.

Main Issue

4. The main issue is whether the condition is necessary having regard to the effect of the development upon the operation of the highway network and is reasonable and precise.

Reasons

5. Condition 8 requires the installation of a passing place within land in the control or ownership of the appellant, located along Hemsals Road or Meadow Drove. The reason provided for the condition is in order to ensure that the local highway network is adequate for the development.
6. Paragraph 56 of the National Planning Policy Framework ('the Framework'), as well as Planning Practice Guidance ('PPG') state that conditions should be only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other regards. Paragraph 111 of the Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual or cumulative impacts on the road network would be severe.
7. The appeal site is served by a narrow rural road of mainly single carriageway width. The topography of the local area is flat and much of the length of the road between Willingham and the appeal site runs between fields, with drainage ditches on either one, or both sides.
8. Although the location is rural in nature and the road serves relatively few properties, the potential for vehicles to meet each other when travelling in opposite directions exists. Given the lack of designated passing places, it is possible that such conflicts would require one of the vehicles involved to reverse a significant distance in order to find an adequate location to allow vehicles to pass.
9. However, as the road does not form a through-route and it appears to serve only a very limited number of homes and businesses, I consider that such conflicts would be infrequent, and although undoubtedly inconvenient, are unlikely to be inherently dangerous, even during winter months.
10. The proposed dwellings would have the potential to increase the level of traffic using this road and would therefore also increase the likelihood of vehicles meeting. However, given the number of dwellings involved, this increase is likely to be very modest. Whilst the introduction of a formal passing place would improve the existing situation and would enable the road network to better accommodate the traffic that uses it, it has not been shown that it would be necessary to address an unacceptable road safety or severe highway operation issue that would result from the proposed dwellings. Furthermore, given the length of the road, the likelihood of vehicles meeting close to the single passing place that would be provided is low, and its use would likely require some degree of reversing by vehicles in any event.

11. The condition requires that the passing place be installed on land within the applicant's control or ownership and "off of the adopted highway". The provided site location plan defines the appeal site as Tibbitts Farm and Tibbitts Farm House. The southern extent of the appeal site ends at the drainage ditch that is located to the north of the highway. The site location plan also indicates that the appellant controls land to the east and west of Tibbitts Farm, and also to the south of the road. However, other than two small areas which are existing access or turning points, the extent of land within the control of the appellant appears to be limited to areas up to, but not including the drainage ditches on either side of the highway.
12. The evidence also includes an extract indicating the extent of the adopted highway. This appears to include the road and some land around it, but also excludes the drainage ditches. The ownership or control of the drainage ditches is unclear from the evidence that is before me, but in effect, they separate the adopted highway from the fields around the road in both physical and land control terms.
13. Therefore, in order to provide a layby of the size required by Condition 8 and accessible from the road, I consider that it is likely that this would require the use of land which is outside of the control of the appellant. Furthermore, if the appellant were to provide a passing place within the appeal site, or on land they control, then the intervening areas of land and drainage ditches would render such a passing place inaccessible.
14. I acknowledge that it may be possible to provide additional passing space within the area of the adopted highway, however this option is explicitly prevented by the wording of the condition, and furthermore, as I have set out above, I do not consider that the condition is necessary in order to make the development acceptable, in any event.
15. Overall, I find that the condition places an unreasonable burden upon the appellant as it is unclear how compliance with the condition could realistically be achieved.
16. An interested party has commented that Hemsals Road only includes the stretch of road beyond the appeal site when travelling from Willingham. It is stated that the requirement of the condition to provide a passing place on Meadow Drove or Hemsals Road would not mitigate the effects of the development, if the passing place was provided on Hemsals Road, as traffic travelling to and from the appeal site from Willingham would have no need to use this stretch of road.
17. As previously stated, the name of the road which serves the appeal site is not entirely clear. However, I agree that the installation of a passing place beyond the stretch of road between Willingham and the appeal site would have little, if any, mitigating effect on the increase in traffic which would result from the proposal. Whilst this may not have been the Council's intention, the requirements of the condition, in effect, allow the installation of the required passing place at any point along the road. As a passing place in such a location would not mitigate the harm that the condition seeks to prevent, the condition, is therefore imprecise in its wording.
18. In conclusion, I find that the condition is not necessary having regard to the effect of the development upon the operation of the highway network,

reasonable or sufficiently precise. It therefore fails to meet three of the six tests as set out in the Framework.

Other Matters

19. I understand that other developments along this road may have been subject to restrictions imposed by means of planning condition due to the nature and capacity of the road. However, the circumstances of the imposition of these conditions, or the precise wording of them, are not matters that are before me, and these instances may not have been wholly comparable to the proposal to which this appeal relates. Accordingly, they are not determinative in my considerations.

Conditions

20. PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 ('the Act') should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original prior approval, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed between the parties.
21. Furthermore, as the appeal is made under section 78 of the Act, I am mindful that in allowing it, an express planning permission would be granted for the original proposal. In this circumstance, the conditions and limitations contained within Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO') which apply to the original grant of prior approval, would not apply to the subsequent planning permission. Such restrictions include the exclusion of development granted virtue of Class Q of Part 3 of Schedule 2 of the GPDO from permitted development rights under Parts 1 and 20 of Schedule 2 of the GPDO.
22. Accordingly, I have sought the views of the main parties on this matter and having regard to the advice within PPG in relation to the restriction of the future use of permitted development rights, I conclude that it is both reasonable and necessary in this instance to impose additional conditions to restrict those rights that would otherwise been restricted by the planning permission granted by the GPDO in relation to permitted development rights under Parts 1 and 20 of Schedule 2 of the GPDO. This would ensure that the development is carried out as originally proposed and would not prejudice potentially interested parties who would not have been afforded opportunity to
23. A further condition of the grant of planning permission under Class Q of Part 3 of Schedule 2 of the GPDO is that the development must be completed within a period of three years starting with the prior approval date. Although PPG states that conditions requiring a development to be carried out in its entirety would be likely to fail the test of necessity, it also states that permissions under Section 73 of the Act cannot be used to vary the time limit for implementation and that such a condition must remain unchanged from the original permission. Accordingly, in this instance I consider that it is necessary to impose a condition requiring that the development be completed in accordance with the three-year period starting from the original date of prior approval being granted.

Conclusion

24. For the reasons set out above, I conclude that the appeal is allowed.

C Harding

INSPECTOR

**** SCHEDULE A – CONDITIONS ****

- 1) The development hereby permitted shall be completed no later than 9 June 2024.
- 2) No development shall take place until:
 - a) The appeal site has been subject to a detailed desk study and site walkover, to be submitted to and approved by the Local Planning Authority.
 - b) The appeal site has been subject to a detailed scheme for the investigation and recording of contamination and remediation objectives have been determined through risk assessment and agreed in writing by the Local Planning Authority.
 - c) Detailed proposals for the removal, containment or otherwise rendering harmless any contamination (the Remediation method statement) have been submitted to and approved in writing by the Local Planning Authority.
- 3) Prior to the first occupation of the dwellings hereby permitted, the works specified in any remediation method statement detailed in Condition 2 must be completed and a Verification report submitted to and approved in writing by the Local Planning Authority.
- 4) If, during remediation or construction works, any additional or unexpected contamination is identified, then remediation proposals for this material should be agreed in writing by the Local Planning Authority before any works proceed and shall be fully implemented prior to first occupation of the dwellings hereby approved.
- 5) Prior to commencement of development a scheme for the disposal of surface water and foul water that can be maintained for the lifetime of the development shall be provided to and agreed in writing with the local planning authority.

The approved scheme shall include:

 - a) the existing drainage arrangements of the site including discharge location and rate where appropriate;
 - b) the proposed discharge location in accordance with the drainage hierarchy and reasonable evidence this can be achieved;
 - c) a site plan identifying indicative locations for sustainable drainage features;

d) evidence to support b) which must include infiltration/percolation testing or written confirmation from the appropriate water authority/third party that a discharge to its drainage system is acceptable; and

e) details of foul discharge location.

The details shall identify how the scheme achieves flood resilient and resistant construction and finished ground floor levels are to be set no lower than 150 mm above existing ground level.

- 6) No works to or removal of hedgerows, trees or shrubs, brambles, ivy and other climbing or works to or demolition of buildings or structures that may be used by breeding birds shall take place between 1st March and the 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.
- 7) Prior to the commencement of development, a scheme of biodiversity enhancement shall be supplied to the local planning authority for its written approval. The scheme must include details as to how a positive net gain in biodiversity has been accomplished. The scheme shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority.
- 8) Notwithstanding the provisions of Article 3(1) and Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development other than that authorised by this permission shall take place within the curtilage of the dwellinghouses hereby permitted.
- 9) Notwithstanding the provisions of Article 3(1) and Class A of Part 20 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no additional storeys of new dwellinghouses shall be constructed on the development hereby permitted.

****END OF SCHEDULE A****