



Appeal Decision

Site visit made on 20 December 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th December 2023

Appeal Ref: APP/Y1138/W/23/3324139

Down Farm Buildings, Burlescombe, Tiverton EX16 7LF

- 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 (as amended) (GPDO).
 - The appeal is made by Alicia Hill of Acorus against the decision of Mid Devon District Council.
 - The application Ref 22/02356/PNCOU, dated 14 December 2022, was refused by notice dated 28 April 2023.
 - The development proposed is prior notification for the change of use of an agricultural building to 1 dwelling under Class Q.
-

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, as amended, for the change of use of an agricultural building to 1 dwelling at Down Farm Buildings, Burlescombe, Tiverton, EX16 7LF, in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph Q.2 (1) of the GPDO through application Ref 22/02356/PNCOU, dated 14 December 2022. The approval is also 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 GPDO.

Background

2. Schedule 2, Part 3, Class Q (a) permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a Class C3 use (dwellinghouse). This provision also includes, at (b) development referred to in Paragraph (a) together with any building operations reasonably necessary to convert the building.
3. This appeal relates to a steel portal framed building with profiled metal sheet and blockwork walls and corrugated steel sheet roof. The building's west elevation faces towards the rural road, set some distance back with an intervening area of hardstanding. The east elevation adjoins parts of other buildings within the farm complex. An existing dwelling is situated adjacent to the site and in a broader context, the building sits within a small cluster of dwellings located in close proximity to the A38 at the Broad Path junction.

Main Issue

4. The main issue is, having regard to Schedule 2, Part 3, Class Q, Q.2 (1) (e), whether the building's location or siting render it impractical or undesirable for use as a dwelling.

Reasons

5. I have had due regard to the development plan policies insofar as they are relevant to this appeal proposal, including the Devon Minerals Plan (2017) (DMP). I have also had regard to the National Planning Policy Framework which indicates¹ that known locations of mineral resources should not be sterilised by non-mineral related development.
6. The site lies within a Mineral Consultation Area and Mineral Safeguarding Area, owing to its proximity around 20 metres from the Hillhead Quarry and around 72 metres from the 'Preferred Area' for sand and gravel extraction at Penslade Cross Mineral Site, allocated under the DMP Policy M12 but not yet subject of any mineral planning permission. Policy M2 of the DMP seeks to safeguard such resources within the Mineral Safeguarding Area from sterilisation or constraint by new development.
7. The submission of Devon County Council (DCC), as the body responsible for minerals planning, indicates that as the parts of Hillhead Quarry nearest to the appeal site have ceased extraction and undergone restoration or, in the case of a silt lagoon, are not likely to be constrained by the introduction of a new dwelling, it is not an issue for the appeal proposal. I find no reason to reach an alternative conclusion. On the other hand, the potential constraint on future mineral working within the Preferred Area at Penslade Cross remains a concern as properties sensitive to noise and dust can experience adverse effects at a distance of up to 250 metres. An interested party with an interest in the mineral resource also raises similar concerns about the potential increased sensitivity from the addition of another dwelling to the area.
8. DCC acknowledge that the distance from the edge of the Preferred Area to the appeal site is similar to the distance between the same and other neighbouring dwellings; Down Farm, Worthill and Watts Cottage. Consequently, future occupiers of the dwelling would be expected to experience noise levels similar to, but no higher than occupiers of nearby existing dwellings. The Appellant has submitted a plan showing both 75m and 250m radii from the appeal building, Down Farm and Worthill which shows that the appeal building is no closer to the Preferred Area than these dwellings and, due to its siting in relation to the same, is shielded by them.
9. Paragraph 5.2.2. of the Mineral Safeguarding Supplementary Planning Document (2018) (SPD) acknowledges that it may be possible to conclude compliance with DMP Policy M2, such as where an existing development of a similar type as being proposed is located closer to the mineral resource. It also states that this is subject to the cumulative effect of such development not resulting in increased local sensitivity to the impacts of mineral development.
10. My view is that if any breach of a condition on any future minerals planning permission were to occur, the impact would be felt at Down Farm and Worthill before and/or to a greater degree than it would at the appeal building. Taken

¹ Framework Paragraph 216

cumulatively with them, the appeal proposal would increase the number of receptors, but the sensitivity of the future occupiers would be no different or greater than existing neighbouring residents.

11. Given the above, my view is that the proposal would not increase the local sensitivity and there is no need to demonstrate an overriding strategic need for the development under DMP Policy M2 and no sterilisation or further constraint of the resource would occur. Consequently, there are no reasons of impracticality or undesirability to withhold prior approval.

Other Matters

12. I note from the evidence that a covenant may exist to prevent future occupiers from complaining to either the operator or relevant authority about any adverse effects of mineral extraction. Given my findings above, this has not factored as a material consideration in my decision.
13. I also note the comments of a neighbouring occupier in respect of a number of matters. In relation to rights of access, this is a civil matter which sits outside of the planning process. The issue of the location of utilities is of little consequence as the building is already served by power and water, and can be connected to an existing package treatment plant for foul water. Whilst there is no real garden area, this is not an aspect which prevents the granting of prior approval, which is actually concerned with ensuring that the curtilage of the building would be no greater in size than the footprint of the building itself.

Conditions

14. No further conditions are suggested by the Council that could otherwise be imposed under GPDO Paragraph W.(13) and I find no reason to impose any.

Conclusion

15. For the reasons given above, I allow the appeal.

Hollie Nicholls

INSPECTOR