



Appeal Decision

Site visit made on 10 January 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal Ref: APP/Y3940/W/23/3323141

Nursery Farm, Stock Lane, Landford, Salisbury, Wiltshire SP5 2ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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.
 - The appeal is made by Mr C Schepens against the decision of Wiltshire Council.
 - The application Ref PL/2022/07357, dated 22 September 2022, was refused by notice dated 29 November 2022.
 - The development proposed is notification for prior approval under Part 3, Class Q for one agricultural building to be converted into five residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A description of development was not provided on the application form so I have utilised that provided on the decision notice and appeal form in the banner heading above.
3. Since the submission of the appeal a decision has been issued in respect of an appeal against an enforcement notice for Land at Nursery Farm.¹
4. Since the determination of the application the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 which was amended on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I have referred to the provisions of the Framework below, I have done so with numbering from the revised version.

Deemed consent?

5. 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 GPDO), development is permitted for the change of use of a building and any land within its curtilage, from use as an agricultural building to a use falling within Class C3 (dwellinghouses) together with building operations reasonably necessary to convert that building, subject to limitations and conditions.

¹ APP/Y3940/C/22/3308665

6. The Council may refuse the application where it considers that the proposed development would not comply with, or that the developer has provided insufficient information to the Council to establish whether the proposed development would comply with, the requirements set out in paragraphs Q.1 and Q.2. The condition at paragraph Q.2(1) states that the provisions of paragraph W apply.
7. The appellant contends that the Council failed to provide written notice as to whether the prior approval was required within the 56-day statutory period prescribed by the GPDO and therefore that prior approval is deemed to have been granted.
8. The GDPO does not contain a requirement for prior approval applications to be validated however the statutory period for determination as to whether prior approval is required does not start until all required information has been received. Paragraph W of the GDPO sets out the information that applications for prior approval must be accompanied by. This includes at para W (2) (bc), in relation to development proposed under Class Q, a floor plan indicating amongst other things, the total floor space in square metres of each dwellinghouse. Floor plans drawn to scale were received by the Council on 22 September 2022, and a subsequent plan stating the proposed floorspace of each unit in words was received on 4 October 2022.
9. The appellant contends that because the floor plans originally submitted were to scale, they provided enough information to calculate the total floor space of each dwellinghouse and therefore fulfilled this requirement. This view is supported by a legal opinion prepared on behalf of the appellant.
10. However, the requirement for the total floorspace, in square metres of each dwellinghouse to be indicated on the plans is distinct from other requirements in Paragraph W of the GDPO which refer simply to dimensions and do not specify in what format these should be provided. The plans submitted to the Council on 22 September 2022 did not indicate the total floor space in square metres and as such I do not consider that the plans originally submitted meet the requirements of para W (2) (bc). Therefore, the statutory period prescribed by the GDPO did not start until plans indicating this information were received by the Council on 4 October 2022. Therefore, the Council made a decision within the statutory period and prior approval is not deemed to be granted.
11. The appellant has drawn my attention to an appeal decision where prior approval was deemed to be granted. However, that decision did not relate to the provision of the total floorspace in square metres and it is not clear whether or not such information was provided in that case. I have also been provided with a list of applications where floor space was not annotated on the plans, however these cases are not before me.

Lawfulness

12. Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.

13. The Council refer to unauthorised activities taking place on the wider site. However, there is no evidence before me that the building operations involved in the construction of the appeal building were unlawful. Furthermore, Class Q refers to existing buildings and their curtilage in agricultural use. There is no substantive evidence before me that the lawful use of the appeal building, and its curtilage was anything other than agricultural. Therefore, the provision of Article 3(5) is not applicable in this case.

Main Issues

14. The main issues are:

- whether the proposed development would constitute permitted development in respect of Class Q (b) and paragraph Q1(i) of Part 3 of Schedule 2 of the GPDO with particular reference to the extent of the proposed building operations, and if so
- the transport and highways impacts of the development,
- whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from an agricultural use to a use falling within Class C3 (dwellinghouses), in terms of the living conditions of future occupiers with particular regard to noise and disturbance, and
- the design or external appearance of the building.

Reasons

15. The appeal site includes an existing former poultry shed located within a field which slopes down to the east. It is accessed via a rural lane which serves a small number of properties. A building of a similar form is present adjacent to the appeal building and further buildings exist to the east of the appeal site.

Proposed building operations

16. The submitted Structural Report indicates that the roof of the appeal building is in good condition and that the majority of the timber framing is generally in good condition with a limited number of damaged or deteriorated elements. It states that the buildings could be converted to residential without any significant modifications. It highlights the need for careful planning of partition layout to improve sway resistance and the use of light weight roof finishes and independent support for ceilings and heavy services. I inspected the interior of the building at my site visit and found it to be as described in the Structural Report.
17. The Council contend that inadequate information has been submitted in relation to the ability of the roof to accommodate new materials. However, it is proposed to retain the existing metal sheet roofing and existing timber cladding, repairing where necessary. Sections of wall would be removed to create inner courtyards and recessed entrances and new windows and doors would be installed.
18. Class Q.1(i)(i) (aa) allows for the installation or replacement of windows, doors, roofs and exterior walls, so the proposed alterations to the building would be within the scope of Class Q and would be necessary as evidenced in the Structural Report. Taking this and the fact that the building is structurally

suitable for conversion into account, the relatively minor works to the exterior of the building would be reasonably necessary to make it weatherproof and suitable for human habitation. Consequently, the proposed external works to the buildings outer fabric would neither represent a fresh new build nor the rebuilding of the structure.

19. Whilst the information submitted with the application indicates that a significant section of the building is proposed to be demolished, this part of the building is excluded from the appeal site and therefore these works are not before me.
20. Given my findings above in respect of the new building work required to facilitate the residential use of the building, as a matter of fact and degree, I find that the circumstances in the Hibbitt case² are not directly comparable. In any event, I have dealt with the appeal on its own merits.
21. Based on the evidence provided, I am satisfied that the structural integrity of the building is sound and would form an integral part of the new dwellings. The building operations would be reasonably necessary in this instance and would not exceed the limitations set out in paragraph Q.1(i) of the GPDO. As such, the proposal would constitute permitted development as set out under Schedule 2, Part 3, Class Q of the GPDO.

Transport and highways impact

22. 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. Paragraph 115 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 116 seeks to ensure that development creates places which minimise the scope for conflicts between pedestrians, cyclists and vehicles.
23. The proposed dwellings would be accessed via a poorly maintained rural track which leads south from Stock Lane. The track is also a public footpath, which is unlit and does not benefit from separate footways.
24. The appellant contends that the track currently experiences around 240 car movements and 11 HGV removal/delivery truck movements a week and that the proposal would typically add 170 car movements per week. Therefore, the proposal would result in a marked increase in the amount of traffic using the access road.
25. There are no formal passing places along the track and much of the lane is too narrow for two vehicles to safely pass one another. Therefore, in the inevitable circumstance of two vehicles meeting in a narrow section, one user would be required to reverse, potentially a considerable distance along the lane. Given that the lane is part of a designated public footpath, without pavements, this could result in conflict with other road users and an increased risk to highway safety.

² Hibbitt v SSCLG[2016] EWHC 2853

26. I acknowledge that a number of other properties are already accessed via this lane, however the presence of an existing harm does not justify worsening that harm through increased use.
27. The proposal would result in a more intensive use of the lane which would increase the risk of conflict between users of the highway. As such I conclude that the proposed development would harm highway safety. It would result in unacceptable transport and highways impacts which is identified as an issue for determination in paragraph Q.2(1) (a) of Part 3 of Schedule 2 of the GPDO and would conflict with the Paragraphs 115 and 116 of the Framework.

Location or siting of building

28. The appeal site is adjacent to a similar agricultural building which proposed openings would look towards.
29. The proximity of the proposed dwellings to any agricultural activities taking place within the adjacent building along with associated movements would be likely to give rise to significant levels of noise and disturbance which would be experienced by future occupiers of the proposed dwellings.
30. The appellant states that the building is in their ownership, and they have suggested that a condition be imposed on any permission which could require that the agricultural use of the building to cease prior to the first occupation of any dwelling. While the Council may have used a similar condition previously, it is not clear to what use the building would be put, were the agricultural use to cease and I am not convinced that such a condition would be reasonable. Furthermore, it would not be feasible for the Council to continually monitor the use of the building and therefore a condition of this nature would not be enforceable.
31. In the absence of a suitable mechanism to control the use of this building it would not be possible to adequately mitigate the harm to future occupiers of the appeal site as a result of the noise and disturbance from its use. Consequently, the proposal would fail to provide acceptable living conditions for future occupiers.
32. The evidence submitted with the appeal suggests that HGV movements associated with the use of the eastern part of the site are infrequent. Given that the dwellings are not directly adjacent to the main access into the site, I do not consider that vehicular movements associated with the use of the remainder of the site would create unacceptable living conditions for future occupiers of the proposed dwellings.
33. Although not forming part of the reason for refusal, the Council contend that it is undesirable to convert the building because the building is not sympathetic to the character of the landscape, which is in the setting of the New Forest National Park and a Special Landscape Area and its retention and conversion would exacerbate the visual impact of the buildings.
34. Paragraph 182 of the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and that development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

35. The building is an established feature of the countryside. The proposal would not result in its enlargement or significantly change its external materials. Therefore, the proposal would have a neutral impact on the landscape and would conserve the scenic beauty of the National Park.
36. I conclude that the location and siting of the building, in close proximity to an agricultural building, makes it impractical or undesirable for it to change to a use falling within Class C3 (dwellinghouses) in terms of the living conditions of future occupiers with particular regard to noise and disturbance.

Design or external appearance of the building

37. The Framework at paragraphs 131 and 135 seek, amongst other things, to ensure that developments achieve a high standard of design, are visually attractive, create high quality, beautiful and sustainable buildings and places and are sympathetic to local character.
38. The proposed works to convert the building are largely internal and would not significantly alter the bulk and mass of the building although the proposed recessed areas and new windows and doors would introduce some articulation to the linear form of the building. The external materials would be largely unchanged.
39. The appeal building is an established feature in the locality and as such would not appear as an incongruous addition to the area. Although the overall appearance would be of a building with agricultural origins this would not be inappropriate in its rural context. The proposed alterations to the building, although minor, are of a good standard of design and result in a building with an acceptable external appearance.
40. I conclude that the design and external appearance of the building would be acceptable.

Conclusion

41. I do not find that the design or external appearance of the proposal would be unacceptable. However, for the reasons given above I find that the location or siting of the building makes it otherwise impractical or undesirable for the building to change from an agricultural use to a use falling within Class C3. I further find that the transport and highways impacts of the development would be unacceptable.
42. For the reasons given above the appeal is dismissed.

E Pickernell

INSPECTOR