



Appeal Decision

Site visit made on 15 March 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2024

Appeal Ref: APP/M2270/W/23/3331120

Barn and Former Dairy Buildings, Land at Kippings Cross Farm, Hastings Road, Matfield, Tonbridge, Kent TN12 7HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs Marrero against the decision of Tunbridge Wells Borough Council.
 - The application Ref is 23/01143/pnr.
 - The development proposed is change of use from agricultural to flexible use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form and I have removed the associated descriptions of the site since they are not a description of development.
3. Under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO), planning permission is granted for the change of use of agricultural buildings to a flexible commercial use, subject to limitations and conditions.
4. Paragraph R.3(1)(b) requires that, before changing the use of the site under Class R, the developer must, where the cumulative floor space of the buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to four listed matters, which include the transport and highways impacts of the development.

Main Issues

5. The main issues are:
 - Whether the proposal would be permitted development under the provisions of Schedule 2, Part 3, Class R, and;
 - If so, the acceptability of the transport and highways impacts of the development.

Reasons

Whether Permitted Development

6. The existing structures are in a dilapidated condition, however, it is not disputed that they constitute buildings for the purposes of the GPDO. They would require building operations to facilitate the change of use and these are likely to be substantial. Class R, however, relates only to change of use and does not permit any operational development. As such, these works would fall outside the scope of the appeal.
7. Paragraphs R.3(3) and (4) refer to circumstances where planning permission is granted for associated operational development, and the appellant states that, should prior approval be granted, then a full application for operational development would be submitted.
8. For these reasons, despite the poor condition of the existing buildings, the need for associated works would not prohibit the change of use from falling under Class R. Based on the evidence, I am satisfied that the proposal falls to be considered under Schedule 2, Part 3, Class R.

Transport and Highways Impacts

9. The proposal would use an existing access to the west of the site from the northern side of the A21, on the approach to the Kippings Cross Roundabout. Vehicles would then use a narrower section of track running parallel to the A21 to reach the site. The details show that the other existing site access onto the B2160 would not be used. The A21 at this point is a dual carriageway and subject to the national speed limit, and it forms part of the strategic road network, for which National Highways are the highways authority.
10. The application does not include details of which of the uses permitted by Class R the appellant seeks to use. However, and in the absence of evidence to the contrary, it is very likely that vehicle movements associated with any of these new uses would be significantly greater than those generated by the existing agricultural use. The types and sizes of vehicles associated with those uses could also vary significantly, for example between a storage or distribution facility and a hotel.
11. The highways authority note this part of the A21 is subject to both congestion and safety concerns and that mitigation for the effects of development on this part of the A21 has been sought from other relevant development proposals. Concerns are raised in respect of the safety of the access, in particular, the use of the right turn into the site via the central reservation on the A21 and drivers attempting to turn right out of the site onto the A21. In addition, it may be difficult for larger vehicles to navigate the tight right turn and narrow access track towards the site after exiting the A21. Should they occur, difficulties experienced on this access track could cause vehicles to wait on, or obstruct part of, the A21. Overall, there is not sufficient evidence with the appeal to demonstrate that the effects of the proposal in these respects would be acceptable.
12. The appellant has highlighted other planning decisions which relate to other nearby buildings and uses which share the same access onto the A21, and there are other current development proposals which are under consideration. These vary in scale and include alterations to the Farmhouse, as well as major

development proposals for equestrian uses, and some have required mitigation measures to the junction in order to make it safe for those purposes. However, there is not substantive evidence to suggest that the highways implications associated with those other developments were similar to those of this appeal scheme, including in terms of their likely number of vehicle movements or vehicle sizes. Unlike the other proposals, vehicles associated with this proposal would also need to use a narrow section of track to access and egress the site itself. As such it cannot be established with certainty that the effects of those other proposals were similar to those of this appeal. This is the case irrespective of site ownership and rights of access which exist over the land. The absence of detailed comments from Kent County Council highways authority does not provide a reason to alter this judgement, particularly as they are not the highways authority for the affected part of the A21.

13. Given the busy nature of this part of the A21, the proposal has the ability to cause significant and long lasting harm to highway safety. While there may be solutions which could assist in addressing the concerns raised, it has not been demonstrated what they would entail or whether they would be successful in addressing the impacts of the proposal. As such it would not be reasonable to delay the resolution of these matters by the use of planning conditions.

Conclusion

14. For the reasons given, it has not been demonstrated that the development would be acceptable in terms of its transport and highways impacts. The appeal is therefore dismissed.

C Shearing

INSPECTOR