



Appeal Decision

Site visit made on 17 September 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2024

Appeal Ref: APP/Z3825/W/23/3333162

Lot 1, Delspride, Kent Street, Cowfold, Horsham, West Sussex RH13 8BB

- 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 Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr & Mrs Bryant against the decision of Horsham District Council.
 - The application Ref is DC/23/1625.
 - The development proposed is 'change of use of agricultural building to a single dwellinghouse'.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'change of use of agricultural building to a single dwellinghouse' at Lot 1, Delspride, Kent Street, Cowfold, Horsham, West Sussex RH13 8BB in accordance with the application Ref DC/23/1625 and the details submitted with it, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to an application made pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). At the time the application was made and determined, Class Q contained a permitted development right for changes of use of buildings and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) together with building operations reasonably necessary to convert the building.
3. Subsequently, amendments to the GPDO, including to Class Q, made by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2024 came into force on 21 May 2024. However, given the transitional provisions applicable to the amendments, I have determined the appeal against the previous version of Class Q that was in force at the time of the application.
4. The permitted development right at Class Q is subject to certain limitations and conditions. The conditions at Q.2 establish a requirement that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to certain matters. These matters include whether the location or siting of

the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses).

5. In determining such an application, the local planning authority are required to take into account any representations made to them as a result of consultation, and to have regard 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. I have considered the appeal on the same basis.

Main Issue

6. The main issue is whether or not prior approval should be granted having regard to whether the location or siting of the building makes it impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) in respect of odour, noise and disturbance effects on the living conditions of future occupiers.

Reasons

7. The GPDO does not define what is meant by 'impractical or undesirable' for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses). However, the Planning Practice Guidance indicates that reasonable ordinary dictionary meanings should be applied and states that impractical reflects that the location and siting would not be sensible or realistic and undesirable reflects that it would be harmful or objectionable. It further comments that the location of a building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.
8. In this case, the appeal relates to a building that was formerly in agricultural use as a chicken shed. It is part of a group of buildings which also includes buildings known as Lot 2 and Lot 3. The Council indicates that Lot 2 and Lot 3 were historically part of the same agricultural unit as the appeal building.
9. At the time the Council determined the application, Lot 3 had been granted prior approval for flexible commercial use to form an assembly workshop to be used for design, production and assembly of handmade cabinetry. However, prior approval has since been granted and implemented for car storage use¹. The Council considers this storage use to be compatible with residential use on the appeal site, and I have no firm reason to find differently.
10. Lot 2 did not appear to be in active use at the time of my visit, but I note the Council's concerns that reinstatement of active agricultural use for a chicken farm or other similar intensive agricultural activity could generate noise, odour or other disturbance to the surrounding area.
11. However, subsequent to the Council's decision on the application, prior approval has been granted under Class Q of the GPDO for 'Change of Use of 2No. Agricultural Buildings to 5No. dwellinghouses' on a site including both Lot 2 and the appeal site² ('the Wider Site PA').
12. I acknowledge that development under Class Q is permitted subject to the condition that development must be completed within a period of 3 years

¹ Application ref DC/24/0245

² Application ref DC/24/0560

starting with the prior approval date. Paragraph W of Schedule 2, Part 3 of the GPDO further requires development to be carried out in accordance with the details approved. In effect, these provisions together mean that it would not be possible to change the use of Lot 2 to dwellings under the Wider Site PA without also changing the use of Lot 1 in accordance with the details approved under that application. The appeal proposal could not therefore be implemented while also allowing for the change of use of Lot 2 under the Wider Site PA.

13. Be that as it may, the Wider Site PA indicates an intention for residential use of Lot 2 rather than resuming active agricultural use of this site. Even if the Wider Site PA itself could not be relied on to bring forward the change of use of Lot 2 to residential alongside the appeal proposal, I consider prospects for future active agricultural use on Lot 2 would realistically be very unlikely.
14. In my judgement, the potential for noise, odour or other disturbance from agricultural activity at Lot 2 to cause detriment to the living conditions of future occupiers of the development would be so negligible in reality that the siting or location of the building would not in this case make it impractical or undesirable for the building to change from agricultural use to a dwelling. The proposal would offer a suitably high standard of amenity for occupiers as sought by the Framework, and I conclude that prior approval should be granted.

Other Matters

15. From the information before me, the proposal has the potential to result in a likely significant effect on European designated nature conservation sites in respect of water abstraction. However, Article 3(1) of the GPDO grants planning permission for development described in Schedule 2 subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). In effect, Article 3(1) of the GPDO and Regulations 75 to 78 of the Habitats Regulations mean that development that is permitted by the GPDO and would affect a European site cannot be lawfully begun until the developer has received written notification from the local planning authority to the effect that the development would have no adverse effect on the integrity of the European site.
16. As a result and because the process under Regulations 75 to 78 of the Habitats Regulations is administered under separate legislation which is distinct from the scope of the current appeal, I have not considered this matter further as part of my decision.
17. I have noted representations made by Cowfold Parish Council. However, the principle of the change of use is established by the GPDO and with regard to the relevant prior approval matters, I do not consider the dwelling proposed to amount to overdevelopment.

Conditions

18. Development permitted under Class Q of the GPDO must adhere to the conditions set out at Paragraph Q.2. As I have noted above, these include that the development must be completed within a period of 3 years starting with the prior approval date. The provisions at Paragraph W(12) of Part 3 further require that the development must be carried out in accordance with the approved details.

19. Paragraph W(13) of Part 3 also allows that prior approvals may be granted subject to conditions reasonably related to the subject matter of the prior approval. The application was accompanied by a Phase 1 Geo-Environmental Investigation, but the Council notes that this does not address potential sources of contamination from landfilling and ponds. I therefore consider a condition to secure a scheme to deal with the risks associated with contamination is necessary to ensure no unacceptable risks to health and the environment and to address the prior approval matter of contamination risks on the site. Given the location of the building, particularly in relation to nearby woodland, I have also imposed a condition to require a lighting scheme for biodiversity which is necessary in light of the duty under section 40 of the Natural Environment and Rural Communities Act 2006 to have regard to the purpose of conserving biodiversity.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) Prior to the commencement of the development hereby approved (or such other date or stage in development as may be agreed in writing with the local planning authority), the following components of a scheme to deal with the risks associated with contamination of the site, including the identification and removal of asbestos containing materials, shall each be submitted to and approved in writing by the local planning authority:
 - a) A preliminary risk assessment which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors;
 - potentially unacceptable risks arising from contamination at the site.
 - b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - c) Based on the site investigation results and the detailed risk assessment (b), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.

- 2) Prior to the first occupation of the development hereby approved, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

Any external lighting shall only be installed in accordance with the specifications and locations set out in the approved scheme and shall be maintained thereafter in accordance with the scheme.