



Appeal Decision

Site visit made on 18 September 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2024

Appeal Ref: APP/D3505/W/24/3337012

Agricultural building at Whelp Street, Preston St Mary CO10 9NJ

- 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 R Elsdon against the decision of Babergh District Council.
 - The application Ref is DC/23/05112.
 - The development proposed is Class Q - conversion of agricultural building to class C3 (dwellinghouses).
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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 Class Q - conversion of agricultural building to class C3 (dwellinghouses) at agricultural building at Whelp Street, Preston St Mary CO10 9NJ in accordance with the application DC/23/05112 and the details submitted with it, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The application form does not include a description of the proposal. The description in the above banner heading and my formal decision is therefore taken from the appellant's appeal form.
3. The appeal proposal relates to a prior approval notification made under Article 3(1), Schedule 2, Part 3, Class Q, of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO).
4. On 21 May 2024, Statutory Instrument 2024 No 579 (SI) came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the GPDO. Due to the transitional arrangements, I have proceeded to determine the appeal in accordance with the GPDO provisions that were in force at the time that the original application was submitted in October 2023. All references to the GPDO in this decision therefore relate to the version that was in force at that time.
5. The reason for refusal on the decision notice makes reference to Part 3, Class Q.2(1) (b) of the GPDO which relates to the '*noise impacts of the development*'. However, the wording within the reason for refusal clearly relates to the '*transport and highways impacts of development*'.

6. I therefore sought clarification from the Council on this matter and they confirmed that reference to Part 3, Class Q.2(1) (b) was an error and the reason for refusal should have made reference to Part 3, Class Q.2(1) (a) of the GPDO.
7. Whilst it would appear that the appellant's appeal submissions were based on the grounds that the Council's reason for refusal related to the '*transport and highways impacts of development*', in the interest of natural justice I gave the appellant an opportunity to provide additional comments in respect of this matter. No further comments were received.
8. The submitted Site Location Plan¹ shows the red edge drawn closely around the appeal building. This is the extent of the land that would be subject to the change of use, and therefore represent the curtilage of the dwelling, were I to allow the appeal. It would be an area of land immediately beside the building and would be no larger than the area occupied by the appeal building. As such it would comply with the interpretation of curtilage at Paragraph X of Schedule 2, Part 3 of the GPDO.

Background and Main Issue

9. There is no dispute that the proposal accords with the requirements of paragraph Q.1 of the GPDO, such that it would constitute development permitted under Class Q, subject to prior approval of a number of matters. For permitted development under Class Q, prior approval is required in respect of the of matters listed at Class Q.2(1) (a) – (g).
10. As detailed above the Council have confirmed that the reason for refusal, and therefore the matter in dispute, relates to Class Q.2(1) (a). In this regard the reason for refusal states that insufficient information has been provided to demonstrate that the access is suitable for the proposed use, and that sufficient parking and turning space can be provided.
11. Schedule 2, Part 3, Paragraph W (3) states that the local planning authority may refuse an application where, in their opinion, the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.
12. In view of the above, the main issue is whether sufficient information has been provided in respect of the transport and highway impacts of the development, with particular regard to the suitability of the access, parking and turning space.

Reasons

13. The appeal relates to an agricultural building situated on land to the south of Whelp Street and to the east of the residential dwelling at Dingley Dell. The application includes a plan titled "Existing Access and Visibility Splays"² and the red line on this drawing includes the existing field access off Whelp Street. It is clear from the evidence that the proposed dwelling would be accessed via this existing access, and I have therefore had regard to this plan, and the red line, only in respect of the means of access to the proposed dwelling.

¹ Dwg No. 4384-01

² Dwg No. 0250-0100 P03

14. The appeal proposal is accompanied by a Traffic Report (TR), and a visibility splay plan, which detail that the existing access achieves a visibility distance of 36m to the west and 84m to the east.
15. The Highway Authority have commented that the drawing of the western visibility splay to the centreline of the carriage demonstrates that a splay to the nearside of the carriageway would be less than 36m. The TR explains that the approach from the west is very narrow, there is no possibility of traffic overtaking on this section of the highway and it is therefore reasonable to assess visibility of approaching traffic from the west from the centre of the road as this is the point at which vehicles exiting the access can see oncoming traffic. I find this approach to be acceptable along this section of the highway.
16. This section of Whelp Street has a speed limit of 30mph and the TR details that visibility splay distances of 90m are generally required on roads of this speed, although it also comments that this visibility splay distance can be reduced via a relaxation of the standards. The TR goes on to state that in a letter the Highway Authority required visibility splays of 59m for this access, which in their opinion demonstrates an acceptance of a relaxation of this standard in this location. Whilst I note the Council's, and the Highway Authority's, submissions do not provide specific details of the required visibility splay distance for this access, a copy of this letter requiring a 59m visibility splay distance is attached as an appendix within the TR.
17. As the western visibility splay would not achieve the required visibility distance, a speed survey was undertaken which established that the 85-percentile speed of vehicles travelling from the west was 28.2mph.
18. I acknowledge the Council's concerns that the speed survey was undertaken in August, and therefore a non-neutral month. However, this concern is not adequately substantiated by evidence to support the Council's objection on this matter. Furthermore, whilst I am aware that as a result of the school holidays there may have been less vehicles using the highway when the survey was undertaken, there is no evidence before me to suggest this would alter the average speed that vehicles drive along this highway which is ultimately the information the survey was gathering. Consequently, the carrying out of an average speed survey in August is acceptable in this case.
19. A Stopping Sight Distance table, taken from the Manual for Streets (2007), has been provided and this demonstrates that the theoretical stopping distance for vehicles travelling at 28mph is 39m. On this basis the eastern visibility splay is significantly beyond the 39m stopping distance, however the western visibility splay would fall slightly below. Nevertheless, I find that there are a number of site-specific factors which allow for a slight relaxation of this standard in relation to the western visibility splay.
20. In this regard, I observed on site that the access serving the appeal site is an existing access, likely used by farm vehicles, and the existing tire marks suggest that it is used. Additionally, the existing access serving the residential dwelling at Dingley Dell is situated directly to the west of the appeal site's access. From my observations the visibility distance to the west from Dingley Dell's access is shorter than the visibility distance for the proposed access.

21. My attention has also been drawn to there being zero injury accident records³ along this section of Whelp Street since 2010, and no evidence has been provided to the contrary. This demonstrates that the existing access to the appeal site, and the neighbouring access to Dingley Dell, have both operated effectively. Moreover, I do not consider that the additional vehicle movements associated with a single dwelling would be significant.
22. Furthermore, when turning right out of the appeal site it is logical to assume that the significant visibility splay to the east would allow drivers exiting the appeal site sufficient time and opportunity to look and check that direction first. If it is clear then drivers can edge out slightly into the highway to observe any vehicles coming from the west, which would be on the far side of the highway from the access. In the meantime, any vehicles that then emerge from the east would have sufficient time and distance to slow down if they observe a vehicle leaving the appeal site. Whilst not ideal, I nevertheless consider this to be a realistic and likely approach when exiting the appeal site.
23. In view of the above, I find that sufficient information has been provided to demonstrate that the access is suitable for the proposed development and would not result in an unacceptable impact upon highway safety.
24. In respect of parking and turning space, as detailed above the submitted site location plan shows the site edged red, and therefore the proposed curtilage for the proposed dwelling, as a small area of land around the appeal building. The Council state that insufficient details have been provided in respect of parking and turning space. However, there is no requirement in the GPDO for the curtilage to include dedicated parking provision and/or a turning area, nor does Class Q include any restriction on development that does not explicitly provide a parking and/or turning area.
25. Furthermore, there is no requirement under Class Q for a proposed development to include a curtilage at all. It is ultimately for the applicant to decide whether to include a curtilage of any size, or at all, in an application for prior approval, provided its size does not exceed the restrictions of the curtilage detailed within Schedule 2, Part 3, Paragraph X of the GPDO. That being the case, it follows that an application need not show parking spaces or a turning area in order to be properly considered under Class Q.
26. Reference has been made to an area of hard surfacing adjacent to the building which in practical terms could be used for the parking and turning of vehicles. This area however is not within the proposed curtilage and would therefore fall outside the extent of the land that would be subject to the change of use. Consequently, any attempt by the appellant to use this area for parking of vehicles associated with the appeal proposal may require a separate application. Nevertheless, that is not a matter for me to judge as part of this prior approval application and can be addressed by the parties outside the scope of this proposal if required.
27. In view of all the above, I conclude that sufficient information has been provided to demonstrate that the proposal would be acceptable in respect of the transport and highway impacts of the development, with particular regard to suitability of the access, parking and turning space. The proposal, therefore, complies with the provisions of Q.2(1) (a) of the GPDO.

³ According to CrashMap UK Accident Records

Other Matters

28. The adjacent dwelling at Dingley Dell is Grade II listed and I find the significance of the listed building is in part derived from its age, its association with the surrounding agricultural land and its overall attractive design with a thatched roof, including a number of dormers.
29. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
30. Although a prior approval application is not an application for planning permission (as planning permission would be granted by the GPDO if the proposal is permitted development), given the prior approval matters include siting, location and appearance, there is a need, in accordance with the National Planning Policy Framework (Framework), for me to consider the effect of the proposed development on the setting of the adjacent listed building.
31. The proposed development would result in additional glazing within the appeal building and associated domestic paraphernalia within its curtilage. However, the overall appearance of a utilitarian rural building would be retained and there is a reasonable distance between the appeal property and this listed building. Furthermore, existing boundary treatments, including fencing and mature vegetation on both sides, would screen the single-storey appeal building from this listed building. I therefore find that as a result of the retention of the rural appearance and its spatial relationship, the proposed development would result in a neutral impact on the setting of this listed building.
32. I have taken into account the comments of the local residents and the Parish Council but am unconvinced that the proposal, given its scale and siting, would result in harm to the living conditions of existing residents at Dingley Dell by way of light pollution or loss of privacy, as a result of the appeal building's single storey nature, its distance from the shared boundary and the existing boundary treatment. I note the concerns raised that the proposal would operate as a holiday let, however this matter is not determinative in my consideration of this prior approval appeal.
33. Interested parties have drawn my attention to issues relating to rights of access and rights to carry out works to the access track, as well as potential damage that could be caused to underground pipes and an existing septic tank. These are private matters that I cannot take into account in the determination of this appeal. It would be for the appellant to be satisfied that they can legally access the site in respect of the proposed development.
34. Furthermore, the application is accompanied by an ecology report and the Council has raised no concerns in respect of the proposal having an adverse impact on local wildlife. I have no substantive evidence before me that would indicate I should take an opposing view.

Conditions

35. The approval is subject to the standard 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. Paragraph W (13) of Part 3 of Schedule 2 of

the GPDO also allows conditions to be imposed that are reasonably related to the subject matter of the prior approval.

36. The Council, and the Highway Authority, have each provided a list of suggested planning conditions, which I have considered against paragraph 56 of the Framework, and the advice contained in the Planning Practice Guidance, and I have edited to improve precision and enforceability.
37. Paragraph W (12) requires the development to be carried out in accordance with the approved details. I have therefore imposed a condition specifying the approved plans (1), in the interest of clarity.
38. Whilst not requested by the Council, I have included a condition requiring details, or samples, of the external materials (2), including windows and doors, to be used in the development to be submitted in order to safeguard the character and appearance of the surrounding area. Conditions to limit the times of construction (3) and to prevent the burning of materials on site (4) have been added to protect nearby residential amenity.
39. A pre-commencement condition requiring the access to be constructed with an entrance width of 3m, for a distance of 5m into the site, has been included (5). However, I have removed the Council's suggested reference to the County Council's Standard Access drawing as I have not been provided with a copy or details of this drawing. This pre-commencement condition is required to provide safe access for construction vehicles, as well as future occupiers of the dwelling.
40. Conditions requiring the visibility splays (6), as shown on the submitted drawings, to be provided and kept clear of obstruction, and requiring the access to be surfaced with a bound material for a minimum distance of 5m when measured from the nearside of the carriageway (7) have been included in the interest of highway safety.
41. Also in the interest of highway safety, separate conditions restricting the gradient of the first 5m of the vehicular access into the site (8), and the gradient of the access driveway to the dwelling (9), when measured from the nearside of the carriageway, have been added.
42. I have included a pre-commencement condition which requires details of the means to prevent surface water from the appeal site being discharged onto the highway (10). This pre-commencement condition is necessary to reduce the risk of flooding and to prevent flowing water or ice impacting upon highway safety.
43. A condition requiring details of the cycle storage provision (11) to be submitted has been included to support the use of sustainable modes of transport, however I have amended the Council's suggested wording of this condition to reduce the number of pre-commencement conditions.
44. A condition requiring the submission of details relating to the provision and collection of waste facilities (12) has been added to safeguard the character and appearance of the area and to prevent waste facilities being stored on the highway. I have again amended the Council's suggested wording of this condition to reduce the number of pre-commencement conditions.
45. I note the Council requested a condition removing permitted development (PD) rights under Schedule 2, Part 1 of the GPDO, however dwellings permitted under Class Q do not benefit from such PD rights. This suggested condition also

proposed the removal of PD rights under Part 2, Class A of the GPDO in relation to the erection of means of enclosure. The Framework advises that conditions should not be used to restrict PD rights unless there is clear justification to do so and given that the appeal site already benefits from PD rights under Part 2, Class A of the GPDO, there is no clear justification to remove these rights as part of this prior approval. As such this condition has not been included.

46. A condition requiring the proposed development to achieve specified internal noise levels has been suggested. However, no evidence has been provided to demonstrate that the proposed dwelling would be susceptible or exposed to any specific noise disturbance in this area. This condition is therefore not necessary to make the proposed development acceptable and thus has not been included.
47. For the reasons given earlier in this decision, the appellant is not required to provide parking and manoeuvring areas as part of a prior approval application under Class Q. Consequently, a condition requiring such details to be provided is neither reasonable, necessary, nor enforceable, and has therefore not been included.
48. Furthermore, the condition suggested by the Council requiring the provision of electric vehicle charging points is also not necessary, and therefore not included, because the provision of access to an electric vehicle charging points is a requirement of S1, Part 1, Schedule 1 of the Building Regulations 2010 (as amended).

Conclusion

49. For the reasons given, I conclude that the appeal should be allowed, and prior approval is granted subject to conditions.

R Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby approved shall be carried out in accordance with the following approved plans:
 - Site Location Plan – 4384-01
 - Existing Access and Visibility Splays – 0250-0100 P03 (*only in respect of the access and visibility splays*)
 - Proposed Block Plan – 4384-04
 - Proposed Plans and Elevations – 4384-05 A
2. Notwithstanding any description of materials in the application or on the approved plans, no above ground construction works shall take place on the development hereby permitted until details / samples of any new materials to be used on the external surfaces of the development, including details of new windows and doors, have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details / samples.
3. Operations related to the construction and change of use (including site clearance and demolition phases) of the development hereby permitted shall only operate between the hours of 07.30 and 18.00hrs Mondays to Fridays and between the hours of 08.00 and 13.00hrs on Saturday. There shall be no working and/or use operated on Sundays and Bank Holidays. There shall be no deliveries or collections to the site outside of these approved hours.
4. No burning shall take place on site at any stage during site clearance, demolition or construction phases of the project.
5. No other part of the development hereby permitted shall commence on site until the access has been laid out and constructed with an entrance width of 3 metres for a distance of 5 metres measured from the nearside edge of the carriageway of Whelp Street. The access shall be retained as such thereafter.
6. Before the access is first used in association with the development hereby permitted, visibility splays shall be provided as shown on Drawing No. 0250 -0100 P03. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction to visibility shall be erected, constructed, planted or permitted to grow over 0.6 metres high within the areas of the visibility splays.
7. Prior to the development hereby permitted being first occupied, the access into the site shall be surfaced with a bound material for a minimum distance of 5 metres measured from the nearside edge of the carriageway of Whelp Street, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The access shall be retained as such thereafter.
8. The gradient of the vehicular access shall not be steeper than 1 in 20 for the first 5 metres measured from the nearside edge of the carriageway of Whelp Street.

9. The gradient of the access driveway shall not be steeper than 1 in 12 measured from the nearside edge of the carriageway of Whelp Street.
10. No development hereby approved shall commence on site until details showing the means to prevent the discharge of surface water from the development onto the highway, including any system to dispose of the water, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained as such thereafter.
11. Prior to the development hereby permitted being first occupied, secure, covered and lit cycle parking facilities shall be provided on site in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be permanently retained for that purpose and kept free from obstruction thereafter.
12. Prior to the development hereby permitted being first occupied, details of the areas to be provided for the storage, and presentation for collection/emptying, of refuse and recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and the designated areas shall be retained thereafter for their intended purpose.

*****END OF CONDITIONS*****