Planning Inspectorate

Appeal Decision

Site visit made on 14 January 2025

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 05 February 2025

Appeal Ref: APP/F2605/W/24/3347666
Wash Farm, Fersfield Road, Kenninghall, Norfolk NR16 2HD

- 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 GDPO).
- The appeal is made by Mr and Mrs E Wood against the decision of Breckland Council.
- The application Ref is 3PN/2024/0009/UC.
- The development proposed is prior approval application for a Change of Use of an Agricultural building to 1no. residential dwelling (Use Class C3), and for building operations reasonably necessary for the conversion.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 3, Section W of the GPDO sets out the prior approval process. It states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether, the proposed development complies with any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval for the proposal under Schedule 2, Part 3, Class Q of the GDPO which relates to change of use from agricultural buildings to dwelling houses.

3. The principle of development is established by the GPDO, and the provisions of Class Q do not require regard to be had to the development plan or the National Planning Policy Framework (the Framework). Nevertheless, these documents can constitute material considerations, as they relate to issues of amenity and flood.

4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. As a result, I have sought comments from the parties on the changes to the Framework and whether these have implications in this case and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

5. The main issues in this appeal are: -

- Whether the site is a suitable location for a dwelling with particular regard to its location in Flood Zone 3; and: -
- Whether the proposal would provide suitable living conditions for future occupiers, with particular regard to noise, odour, insects and vermin.

Reasons

6. The appeal site lies to the north of Fersfield Road. It is a single storey steel framed building, with a concrete floor, brick and blockwork walls that are partially rendered, and a profiled composite sheet roof. It lies within a cluster of buildings, of mixed residential and agricultural uses. The building forms a part of a sizeable farm.

Flooding

7. The site lies within Flood Zone 3 and is identified on the Government's Flood Risk Maps as being at a high risk of surface water flooding.

8. In their statement the appellants identify that, whilst the building would remain dry during an extreme flood event, safe access to and from the building during all modelled flood events cannot be guaranteed as areas outside of the building would be flooded, including the vehicular access to the barn. It is identified that the drive would be classified as a risk to most people for approximately 33 metres, and dangerous for some for another 33.

9. Whilst the appellants identify that an alternative pedestrian access would be available in an extreme surface water flood event, they would nonetheless have to pass through flood depths of 0.75 – 1.25 metres for approximately 48 metres, before reaching a point on the public highway that is high enough to be classified as a very low hazard during such an event. Thus, there would nonetheless remain a risk of harm to vulnerable people, such as the elderly, people with disabilities and children.

10. I note the guidance provided in paragraph 181 of the Framework that Development should only be allowed in areas at risk of flooding where, in the light of a site specific flood risk assessment it can be demonstrated that within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location, the development is appropriately flood resistant, any residual risk can be safely managed and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

11. Whilst a site-specific flood risk assessment has been provided and this has demonstrated that the building would be safe from water ingress, it has not been demonstrated that a safe access has been provided.

12. I therefore conclude that the proposal is not a suitable location for a dwelling with particular regard to its location in Flood Zone 3 and fails to satisfy the requirements of Class Q.2 (1) (d) of the GDPO.

Living conditions

13. The appeal building lies close to an adjacent agricultural building and, on the basis of the evidence before me, this building is still in operational use associated with the agricultural business. This building is currently used for general agricultural and machinery storage, lacking facilities for either livestock or drying grain. Additionally, the access and surrounding land is used, at least on occasion, by vehicles accessing the farm and for agricultural storage.

14. The movement and operation of agricultural machinery, in close proximity to a dwelling is, due to the hours of operation of a working farm, likely to result in noise disturbance to any future occupiers of the appeal building, harmfully undermining their residential amenity. Further, the storage of agricultural material, such as hay and straw, is likely to attract vermin, such as mice and rats.

15. In addition, the adjacent building is understood to have an unrestricted use and the hours of operation or specific use of the building or the use to which it is put in association with the operation of the farm are unrestricted. Thus, there is no certainty that the level of activity, or the way in which it is used, will continue and some uses to which the building could be adapted, such as accommodating livestock, would be likely to engender odours and additional vermin as a result of the legitimate use of the building. Restricting the use of the building through the imposition of conditions would have an impact on the efficient operation of the agricultural business and is thus not reasonable or practicable.

16. Bringing these matters together I find that the location of the appeal building would not provide acceptable living conditions for future occupiers.

17. The appellants have suggested that the future occupancy of the development could be restricted to those working, or who last worked, in agriculture.

18. The Planning Practice Guidance (PPG) advises that “The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established” and further guides that “It is important that a local planning authority does not impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system”.

19. Part W(13) of the GPDO indicates that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The subject matter here is the change of use of an agricultural building to a dwelling.

20. The description of development does not describe the dwelling to be created as an agricultural workers dwelling, nor does the appellant argue that such provision is necessary for the operation of the agricultural business. It is however, suggested that a person working in agriculture would be less sensitive to potential ‘disamenity’ arising from proximity to an agricultural activity.

21. In proposing such a condition, the appellants have brought my attention to an appeal decision[1] where the Inspector took a view that the imposition of such a condition was reasonable in addressing the matter of living conditions. I note,

[1] PINS Ref: APP/Y3940/W/23/3318343

however, that this decision references another decision[2] where the inspector reached a decision that the use of such a condition was inappropriate and, in any event, would not address the issue of living conditions for the future occupier.

22. Agricultural occupancy conditions are normally imposed in situations where dwellings would not otherwise be permitted. In the case before me, however, the GPDO would grant approval and does not seek to be restrictive in terms of occupancy. Approval under the GPDO would be for the change of use of an agricultural building to a dwelling, and to seek to restrict the occupancy of that dwelling would run counter to the fundamental intentions of the GPDO to facilitate the conversion of buildings to dwellings. I therefore consider that the imposition of the suggested condition would act to undermine the objectives under which Class Q was instigated. Imposing an occupancy condition would thus be unreasonable.

23. In any event I do not consider there to be a difference between the needs of agricultural workers and any other person to have acceptable living conditions. Thus, such a condition would not address the fundamental point at issue as to whether the location would, in this case, provide future occupiers with an acceptable standard of living conditions. In this case I have found that it would not, nor would such a condition address the matter of flooding.

24. The appellants have drawn my attention to a further appeal decision[3] where an agricultural occupancy condition was imposed. I note however that the description of the development identifies it as worker's a dwelling house and a condition would have been necessary to secure it as such. The proposal before me is not described as being for an agricultural worker and thus the two proposals are not contextually so similar as to bear direct comparison.

25. My attention has also been drawn to other Class Q developments which have been permitted where an agricultural occupancy condition has been used[4]. However, I have no information regarding the context of these permissions and so I am unable to form a full picture of their comparability to the proposal before me. I have, in any case, determined this appeal on its own merits.

26. The appellants have drawn my attention to the conversion of a nearby building[5] to residential use. However, that building is further away from the operational agricultural building and has a different physical relationship to its openings than the appeal building and so is not directly comparable to the case before me.

27. My attention has also been drawn to another development that the Council permitted, where the dwellings would be close to agricultural buildings[6]. I have limited information before me regarding that development, however, it has not been demonstrated that that site is directly comparable, contextually, to the proposal before me. In any case, I have considered the merits of the particular proposal before me in my determination of this appeal.

28. I therefore conclude that the proposal would not provide suitable living conditions for future occupiers, with particular regard to noise, odour, insects and vermin. As

[2] PINS Ref: APP/W1850/W/15/3133678
[3] PINS Ref: APP/N2739/W/15/3003584
[4] Councils Refs: 2014/1175/ATD; S/2015/0410/PA; 15/03824/COUAR; DC/14/02599/AGRNOT/EASTNN; DC/14/03950/AGRNOT/WESTWW; 15/00711/PNCOU; 2015/0485/ATD; 16/00426/PNCOU;
[5] Council Ref: 3PL/2003/0138/F
[6] Council Ref: 3PN/2020/0012/UC

such the proposal is not practicable or desirable in line with the requirements of Class Q.2 (1) (b) and (e) of the GDPO.

Other Matter

29. The site is located within the zone of influence of one or more European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

30. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 subject to Regulations 75-78. Regulation 75 provides that it is a condition of any Planning Permission granted by a general development order that development which is likely to have a significant effect on a European site, alone or in combination with other plans or projects and not directly connected with or necessary to the management of the site must not be begun until the developer has received the LPA's written notification of approval of an application made under Regulation 77. This process lies outside of the scope of this appeal and, in any case, I am dismissing this appeal for other reasons, so I have not considered this matter further.

Conclusion

31. For the reasons given, I conclude that the proposal is not permitted development within Schedule 2, Part 3, Class Q of the Order. The appeal is therefore dismissed.

I A Dyer

INSPECTOR