



Appeal Decision

Site visit made on 5 August 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2025

Appeal A Ref: APP/P1560/W/25/3362920

Comarques Farm Barn, Colchester Road, Thorpe-Le-Soken CO16 0LA

- 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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by FGH (Essex) Ltd against the decision of Tendring District Council.
 - The application Ref is 24/01125/COUNOT.
 - The development proposed is the change of use of Class B1 (now Class E) commercial unit in to four residential dwelling units.
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Appeal B Ref: APP/P1560/W/25/3367140

Comarques Farm Barn, Colchester Road, Thorpe-Le-Soken CO16 0LA

- 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 FGH (Essex) Ltd against the decision of Tendring District Council.
 - The application Ref is 25/00455/COUNOT.
 - The development proposed is the conversion of an agricultural building in to four residential dwelling units.
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Decision

1. For appeal A, the appeal is dismissed.
2. For appeal B, 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 the conversion of an agricultural building in to four residential dwelling units at Comarques Farm Barn, Colchester Road, Thorpe-Le-Soken CO16 0LA in accordance with the application 25/00455/COUNOT and the details submitted with it including plan nos CMQBarn-01B and CMQBarn-03A, and subject to the conditions contained in the schedule to this decision.

Applications for costs

3. An application for costs was made by FGH (Essex) Ltd against Essex County Council with regard to Appeal B. This application is the subject of a separate decision.

Preliminary Matters

4. As set out above there are two appeals on this site. The proposed residential units do not differ in design and the plans differ only in relation to the proposed layout of the car parking arrangements. However, prior approval has been sought for each

under different classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). I have considered each proposal in relation to the relevant class. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

5. For appeal A, Under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, development is permitted for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order, subject to limitations and conditions.
6. The Council may refuse the application where it considers that the proposed development does not comply with, or that the developer has provided insufficient information to enable the Council to establish whether the proposed development complies with the conditions, limitations or restrictions set out in paragraphs MA.1 and MA.2.
7. For appeal B, from 6 April 2018 to 21 May 2024, under Article 3(1) and Schedule 2, Part 3, Class Q, of 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.
8. Any prior approval application or appeal which was made before 21 May 2024 in respect of the 'old' Class Q should be determined on that basis. Similarly, given transitional arrangements set out under Article 10 of the amending Order, any prior approval application made before 21 May 2025 in respect of the old Class Q should be decided on the basis of what was previously permitted. This is the case in this instance and therefore the appeal will be determined on this basis.
9. The Council may refuse the application where it considers that the proposed development does not comply with, or that the developer has provided insufficient information to enable the Council to establish whether the proposed development complies with the conditions, limitations or restrictions set out in paragraphs Q.1 and Q.2.

Main Issues

10. The main issue in appeal A only is:
 - whether the proposed development would constitute permitted development under Schedule 2, Part 3, Class MA of the GPDO.
11. The main issue in both appeal A and appeal B is:
 - the effect of the proposed development on highway safety.

Reasons

Class MA (appeal A)

12. Paragraph MA.1(1)(b) of the GPDO states that development is not permitted by Class MA unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. Under MA.1(2)(b), on or after 1

September 2020, this includes Class E (commercial business and service) of Schedule 2 of the Use Classes Order.

13. Article 3(5)(b) of the GPDO provides that the permission granted by Schedule 2 of the GPDO does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful. Therefore, it must be established as a matter of fact on the evidence that the previous use was both subsisting and lawful. Therefore, if the previous use was not lawful or it involved a use not specified in MA.1(2), the permitted development right granted under Class MA would not apply.
14. The appellant has outlined that from 1995 up until April 2024, the appeal building was being used for light industrial purposes as defined within Class E of the Use Classes Order. Temporary planning permission¹ was granted in 1995 for the use of the building for the assembly and construction of domestic furniture for approximately two years, subject to a restriction that the production relate solely to domestic furniture and was personal to the applicant. This was renewed in 1997² with the imposition of the same condition as before. A copy of this decision provided by the Council shows a conditions stating that the use hereby permitted shall be limited to a period expiring on 30 November 2002 on or before which date the use shall be discontinued.
15. The appellant has stated that the business has continued to operate for a further 22 years without the benefit of planning permission, although no evidence has been provided to support this assertion. Therefore, based on the evidence before me and strictly for the purposes of this prior approval appeal, I cannot confirm that the stated use of the building was either subsisting or lawful or would meet the requirements in paragraph MA.1(1)(b) of the GPDO as outlined above. Furthermore, even if the appeal building was used for business purposes, without the evidence to suggest otherwise, it is likely that Article 3(5)(b) of the GPDO precludes the permitted development rights in question.
16. As such, having regard to all of the above, I conclude that the proposed development would be contrary to paragraph MA.1(1)(b) of the GPDO and so would not constitute permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Highway Safety (appeal A and appeal B)

17. For appeal A, paragraph MA.2. (2)(a) of the GPDO states that before beginning development under Class MA, 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 transport impacts of the development, particularly to ensure safe site access.
18. For appeal B, paragraph Q.2. (1) of the GPDO states that where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition 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 (a) transport and highways impacts on the development, and the

¹ TEN/95/1163

² TEN/97/1285

provisions of paragraph W (prior approval) of this Part apply in relation to that application.

19. The appeal site is accessed via an unmade private track serving the appeal building and a single dwelling, Rondor. The appeal building is currently unused. However, the information provided during the appeal suggests it has previously been used as a commercial premises and, prior to that, for agricultural purposes.
20. The appellant indicates that the number of vehicles accessing the appeal site for these past uses was greater than the proposed use for four residential units and included large commercial vehicles and staff accessing the site on a daily basis. However, whilst this may have been the case, I have no evidence before me to demonstrate as such and at present there are little to no vehicular movements to and from the building.
21. As outlined previously, the use of the appeal site for commercial purposes does not currently benefit from planning permission however the site still retains its original agricultural use, as clarified by the Council within the application pertinent to appeal B. Therefore, if this use were to be restored, it would be likely to result in some level of vehicle movements to and from the appeal site, albeit this is unquantified, and a greater use of the access than at present.
22. The Highways Authority indicate that the associated traffic generation for a single dwelling is approximately 6 vehicle movements per day. The proposed development would result in the addition of four residential units on the appeal site, with two car parking spaces each. Without the evidence to suggest otherwise, I therefore consider that the proposed development would be likely to result in a slight increase in the number of vehicle movements through the access from its current use, even if the appeal site were to return to its original use for agricultural purposes, thereby intensifying the use of the access, albeit only moderately.
23. The access leads to Colchester Road which, in this location, has a speed limit of 30mph. The Highways Authority indicate that for this reason, there is a requirement to be able to see from a setback position of 2.4 metres for at least 43 metres when parameters in Manual for Streets are used.
24. The appellant has provided a plan alongside the application pertinent to appeal B, reference CMQBarn-03 A, which shows that from a setback position of 2.4 metres from the edge of the carriageway, visibility splays of 43 metres can be achieved in both directions. The Highways Authority raise no concerns regarding the visibility splay to the north west of the access. However, in their appeal statement they state that the visibility splay to the south east of the access (traffic approaching side) can only be achieved by incorporating third party land which is not sufficient to ensure that the visibility splay is maintained.
25. However, from the plan showing the visibility splay to the south east of the access and a plan provided by the Highways Authority showing the publicly maintainable highway, it appears that this land is wholly owned by either the appellant or within the control of the Highways Authority, rather than under third party ownership. Therefore, the appellant would not be reliant on the neighbouring properties maintaining their boundary features, which may restrict visibility within these splays.

26. The Highways Authority state that the access at its centre line needs to be provided with a clear to ground visibility splay, as measured from and along the nearside edge of the carriageway. However, this appears to be what the appellant has done in the aforementioned plan provided and I have no evidence which leads me to the conclusion that this plan is incorrect. I also saw during my site visit that there was good visibility for vehicles exiting the access in both directions, although it is noted that this could be impeded by overgrowth of boundary features. Nevertheless, as this land is controlled by the appellant or under the control of the Highways Authority, I see no reason as to why this would not be maintained to ensure highway safety for vehicles when exiting the site.
27. The appellant has also clarified that the access has a width of 5.5 metres for the first 6 metres from the back of the highway boundary, as shown on the submitted plan. This ensures that vehicles can enter and exit the highway in a controlled manner and ensures that opposing vehicles can pass clear of the limits of the highway. This appears to have been recently widened to include grass verges either side of the track. However, I saw during my site visit that there was sufficient space for a vehicle to enter the access whilst another was exiting.
28. Therefore, whilst the proposed development would be likely to moderately intensify the use of the existing access onto Colchester Road, as it benefits from a sufficient width to allow vehicles to enter and exit at the same time and sufficient visibility splays to enable drivers to see oncoming traffic when exiting the site, this change in use would not result in harm to highway safety.
29. As such, I conclude that the proposed development in both appeals would not result in harm to highway safety. It would therefore comply with condition MA.2.(2)(a) of Schedule 2, Part 3, Class MA of the GPDO for appeal A and condition Q.2 (1)(a) of Schedule 2, Part 3, Class Q of the GPDO for appeal B.

Conditions

30. This section relates to appeal B only. Any prior approval and planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO is subject to the condition under Q.2 (3) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date. Given I have listed the submitted plans in my decision and Paragraph W(12) of Schedule 2, Part 3 of the GPDO requires development to be carried out in accordance with the details submitted, the Council's suggested plans condition is unnecessary and has not been imposed.
31. Paragraph W(13), Schedule 2, Part 3 of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. As such I have included a condition requiring a risk assessment be carried out in relation to contamination on the appeal site in accordance with condition Q.2 (1)(c) of Schedule 2, Part 3, Class Q of the GPDO. This is necessary due to the previous agricultural use of the appeal site and to ensure any risks from land contamination to the future occupiers of the dwellings are minimised.
32. I have also included a condition requiring the necessary visibility splays to be provided and retained. As whilst these can already be demonstrated, a condition will ensure that, on land under the control of the appellant, these will be retained in perpetuity to ensure highway safety.

33. Conditions requested in relation to details of a construction methodology and timetable and the public's rights and ease of passage over two public footpaths have not been included as these are not reasonably related to the subject matter of the prior approval. Furthermore, conditions requiring the access to have a bound material surface with a minimum width of 5.5 metres for a distance of at least 6 metres measured for the nearby edge of the carriageway and for the submission of details in relation to a vehicular turning facility, have not been included, as these features are already detailed on the submitted plans and therefore such conditions are not necessary.
34. The Council have requested a condition relating to mitigation of the development's impact on protected European Sites in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). No further information has been provided as to whether the appeal site falls within the zone of influence for any European Sites detailed within the Essex Coast RAMS.
35. However, the grant of planning permission under Article (3)1 of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Effectively, Article (3)1 provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, before the works can be undertaken as permitted development. This includes a separate application to the Council under regulation 77 of the Habitats Regulations to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.
36. Based on the evidence before me, it does not appear that an application to the Council under regulation 77 has been made. However, as the regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined. Therefore, I do not need to consider this matter further as part of the appeal or include the requested condition in relation to this.

Conclusion

37. For the reasons given above, although the proposed development would comply with condition MA.1.(2)(a) of Schedule 2, Part 3, Class MA of the GPDO, as it would be contrary to paragraph MA.1(1)(b) of the GPDO, it would not constitute permitted development under Schedule 2, Part 3, Class MA of the GPDO. Therefore, I conclude that appeal A is dismissed
38. However, appeal B should be allowed and prior approval is granted under Schedule 2, Part 3, Class Q of the GPDO.

E Grierson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until: i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority; ii. the site has been remediated in accordance with the approved measures and timescale; and iii. a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until: i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.

- 2) Prior to first use of the access, visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

END OF SCHEDULE