



29 JUL 2015

Appeal Decision

Site visit made on 16 June 2015

by **William Fieldhouse BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 July 2015

Appeal Ref: APP/P1045/W/15/3005984

Spite Winter Farm, Oakerthorpe Road, Bolehill, Matlock DE4 4GP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr Richard Bowler against the decision of Derbyshire Dales District Council.
- The application Ref 14/00546/PDA, received by the Council on 18 August 2014, was refused by notice dated 9 October 2014.
- The development proposed is the change of use of an agricultural building to a dwellinghouse.

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 1, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") for the change of use of an agricultural building to a dwellinghouse at Spite Winter Farm, Oakerthorpe Road, Bolehill, Matlock DE4 4GP in accordance with the details submitted pursuant to Schedule 2, Part 1, section Q2 of the GPDO and subject to the following three conditions in addition to those set out in the GPDO:
 - 1) No development shall take place until details of the design and external appearance of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 2) No development shall take place until details of the curtilage of the proposed dwelling, including its garden, bin storage, parking and turning areas, and hard and soft landscape works, along with an implementation timetable, have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details and timetable.
 - 3) In the event that contamination is found at any time during the course of development it must be reported in writing to the local planning authority and no further development shall take place until a report of appropriate investigation, risk assessment and any necessary remediation scheme, including an implementation timetable, has been submitted to and approved in writing by the local planning authority. The remediation scheme shall be

implemented, and a verification report submitted, in accordance with the approved timetable.

Preliminary Matters

2. The application was made under the provisions of legislation that has now been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015. I have determined the appeal in the context of, and with reference to, current legislation. Both parties have had opportunity to respond to the fact that the GPDO has been consolidated and updated, and I am satisfied that this has not had a material bearing on the outcome in this case.
3. The GPDO grants planning permission for certain forms of development, including the change of use of an agricultural building to a dwellinghouse along with associated works provided that certain limitations and restrictions are complied with. The Council, in determining the application, was satisfied that, if prior approval were to be granted, the proposal would be permitted development.
4. Notwithstanding that, at the appeal stage the Council has questioned whether the extent of the curtilage to the dwelling would exceed that allowed by the GPDO meaning that the proposal would not in fact benefit from permitted development rights. There are some apparent discrepancies in the information included in the application about what size the curtilage would be, the red line on the submitted plan appearing to include little if any land outside the barn, the supporting statement referring to a curtilage of 28m² and the application form referring to a cumulative area of 120m².
5. However, it is clear from the appeal documents that there is no intention for the curtilage to exceed the GPDO limit. It was evident from my site inspection that there is currently no clearly defined curtilage to the barn, and that the dwelling would be served by an existing access track that also leads to the appellant's fields and another agricultural building meaning that it need not be considered part of the curtilage as defined in the GPDO¹. The GPDO allows conditions to be attached to any prior approval provided that they are reasonably related to the subject matter of the prior approval². It would therefore be possible, if the appeal were to be allowed, to impose a condition requiring details of any garden and parking area for the proposed dwelling to be submitted to and approved by the local planning authority. This would not materially alter the proposal as described in the application but ensure that the extent, design and appearance of the curtilage was appropriate. Furthermore, it is highly unlikely that any third party interests would be prejudiced.
6. On this basis I am satisfied that if prior approval were to be granted, subject to appropriate conditions, the proposal would be permitted development.
7. The Council refused to grant prior approval for two reasons, both of which related to GPDO paragraph Q2(e) which refers to whether the location or siting of the building makes it otherwise Impractical or undesirable for it to change from agricultural use to a dwelling.

¹ GPDO Schedule 2 Part 3 Class X.

² GPDO paragraph W(13).

8. Since the Council's decision, relevant parts of national Planning Practice Guidance ("PPG") have been amended. The PPG now makes it clear that a test in relation to the sustainability of the location of the site should not be applied as the permitted development right recognises that agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. The fact that the site may be in a location where permission would not normally be granted for a dwelling is not a sufficient reason for refusing prior approval. Rather, the test is whether the location or siting of the building would make it impractical or undesirable to change its use to a dwelling, for example if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals³.
9. In light of this change to the PPG, the Council has advised that it no longer wishes to pursue its first reason for refusal, which related to the accessibility of the site, and I agree that there is no need for me to consider that matter further.

Main Issue

10. In light of the above, the main issue is whether the location or siting of the building makes it otherwise impractical or undesirable for the building to be used as a dwelling having regard to the effect that the nearby agricultural activities would be likely to have on the living conditions of future residents.

Reasons

11. The proposal relates to an attractive, traditional stone barn in the countryside outside Wirksworth. A modern agricultural building is located around 20 metres away facing the barn on the other side of a yard, and to the rear of that building is a modest-sized timber shelter for the appellant's cattle that are kept in the adjoining fields.
12. Detailed plans of the proposed dwelling have not been prepared, but the appellant advises that the design and external appearance of the building would not be substantially altered and that the proposal would provide a more conveniently-located home for him as he would continue to operate the farm.
13. It is not uncommon for farmhouses to share an access and yard with, and be located in close proximity to, other agricultural buildings. The building closest to, and facing, the proposed dwelling is used for the storage of agricultural machinery and equipment, and the timber shelter to the rear opens onto the adjoining fields. The scale and intensity of the use of the agricultural buildings is by no means great, and whilst future residents of the proposed dwelling may well be conscious of odours and noise from animals and farm machinery this would not be unusual in a rural area or render the living conditions unacceptable.
14. There is always the possibility that the nature of the agricultural activities could change, but there is nothing to suggest in this case that this would be likely or that it would significantly increase the potential for pollution, particularly given the nature and modest size of the agricultural buildings.
15. If the proposed dwelling were to be occupied in the future by someone not involved with the farm they would be aware of the presence of the existing

³ PPG ID 13-108 and 109 updated 5 March 2015.

nearby buildings and the shared access arrangements. Thus, it is reasonable to assume that any such residents would expect living conditions typical of a rural area, the qualities of which differ in various ways to those experienced in built up areas.

16. I conclude that neither the location nor siting of the building makes it otherwise impractical or undesirable for the building to be used as a dwelling having regard to the effect that the nearby agricultural activities would be likely to have on the living conditions of future residents. The proposal would, therefore, be consistent with the objectives of national policy which seeks to ensure a good standard of amenity for the occupants of buildings, that new development is appropriate for its location in order to prevent unacceptable risks from pollution, and that noise should not give rise to significant adverse impacts on health and quality of life as a result of development⁴.

Conditions

17. Paragraph 3 of section Q2 of the GPDO requires the development to be completed within a period of three years starting with the date of this decision, and paragraph 12(a) of section W of the GPDO requires the development to be carried out in accordance with the approved details.
18. The Council officer report suggests that a number of issues related to the prior approval matters ought to be addressed by conditions and I agree that is so.
19. Given the absence of proposed plans and the nature of the existing building, it is necessary to impose a condition requiring details of the design and external appearance of the proposed dwelling in order to safeguard the character and appearance of the area.
20. A condition requiring details of the layout and landscaping of the dwelling's garden, bin storage, and parking and turning areas are required for the same reason. However given the nature of Oakerthorpe Road, the distance of the site from it, presence of an existing yard, and the limited scale of the proposal I am not convinced that such a condition, or a condition relating to construction plant, materials and vehicles, is necessary in the interests of highway safety.
21. As the site has been used for many years for agriculture, including for housing animals, there is the possibility that contamination may be found and therefore a condition is required to ensure appropriate mitigation measures are taken to protect future occupants from pollution.

Conclusion

22. For the reasons given above, I conclude that the appeal should be allowed and approval granted.

William Fieldhouse

INSPECTOR

⁴ National Planning Policy Framework paragraph 17, 4th bullet point, and paragraphs 120 and 123.