The Planning Inspectorate

Appeal Decision

Site visit made on 14 September 2015

by J Flack BA Solicitor

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

Decision date: 22/09/2015

Appeal Ref: APP/A2525/W/15/3023010
Cattle Shed, High Fen Farm, Fourth Drove, Gosberton, Lincolnshire PE11 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval pursuant to an application made under Schedule 2, Part 3, paragraph Q.2(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by V A Barker & Son against the decision of South Holland District Council.
- The application Ref H08-0845-14, dated 2 October 2014, was refused by notice dated 17 November 2014.
- The development proposed is the change of use of an existing livestock building into three dwellings.

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, paragraph Q.2(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of an existing livestock building into three dwellings at Cattle Shed, High Fen Farm, Fourth Drove, Gosberton, Lincolnshire PE11 4JZ in accordance with the terms of the application Ref H08-0845-14, dated 2 October 2014 and the plans submitted with it.

Procedural matters

2. The application was made in relation to the provisions of Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995. On 15th April 2015, that Order was revoked by the Town and Country Planning (General Permitted Development) (England) Order 2015. However, Class MB and related provisions have been re-enacted by Schedule 2, Part 3 Class Q and related provisions of the 2015 Order, and in these circumstances the effect of the Interpretation Act 1978[1] is that anything done under the revoked Class MB now has effect as if done under Class Q. I accordingly refer to the provisions of Class Q in my decision.

Application for costs

3. An application for costs was made by V A Barker & Son against South Holland District Council. This application is the subject of a separate Decision.

[1] See in particular sections 17 and 23

Background and Main Issue

4. The application is made on a standard form whose heading refers to the proposed change of use of an agricultural building and associated operational development. However, the description of development provided on the form comprises only the change of use of the building, and whilst generalised reference is made to works which would be required, there are no specific proposals and no plans of the proposed elevations were provided. The Council treated the application as seeking prior approval only under Class MB(a) (now Class Q(a)): the appellant has raised no objection to this. Given these circumstances, I consider that the development proposed is development under Class Q(a) only and that the application is made pursuant to paragraph Q.2(2). My assessment proceeds on that basis, and it is important to record that I have not considered any of the limitations set out at paragraph Q.1 which would be engaged by an application arising from proposed development under Class Q(b), as that would be a matter for future consideration by the Council.

5. There is some ambiguity in the location plan before me, in that both the subject building and a wider area of land around it are edged by red lines. However, Class Q does not require that a proposed change of use should be of any land in addition to a building, and the description of development refers only to the existing livestock building. I have therefore treated the application as relating only to this.

6. In the context of the foregoing conclusions, there is no evidence before me which indicates that the proposed development would be contrary to any of the limitations set out at paragraph Q.1. Accordingly, my assessment is of the matters set out at paragraph Q.2(1)(a) to (e): the main issue is whether the location or siting of the building makes the proposed change of use impractical or undesirable.

Reasons

7. The subject of the proposal is a large rectangular building, at present in use for storing straw and housing a small number of cattle. Its metal frame supports a roof of corrugated sheeting. The two ends of the building are provided with timber cladding and metal doors; the longer front and rear sides are open.

8. The building is slightly set back from Fourth Drove, near to its junction with High Fen, the B1397 road. Whilst there is a house on the other side of the junction, and a few further dwellings along Fourth Drove, the nearest settlement is some way distant, and the evidence before me concurs that the building is poorly located in terms of access to services and facilities. It was on that basis that the Council refused the application: it concluded that it would result in an unsustainable residential development in an unacceptably isolated location, referring to paragraph 55 of the National Planning Policy Framework (the Framework) which amongst other things provides that new isolated homes in the countryside should generally be avoided.

9. The meanings of "impractical" and "undesirable" are not defined by the Order: it follows that their ordinary meanings apply. These are inherently broad and capable of encompassing a wide range of planning issues, and the duty at paragraph W(10)(b) of Part 3 to have regard to relevant provisions of the Framework applies accordingly. However, the starting point of Class Q is the grant of permission for the change of use of agricultural buildings, which at

least in some cases will be isolated from services and facilities. The appropriate interpretation of these matters has been clarified by amendments to the Planning Practice Guidance (the Guidance), which records[2] that the permitted development right deliberately does not apply a test in relation to sustainability of location in recognition that many agricultural buildings will not be in village settlements. The Guidance refers[3] to a building located at the top of hill with no road access or services as an example of a building whose conversion might be impractical, but the circumstances of the appeal building are clearly not so extreme.

10. At appeal, the Council accepts that its reason for refusal is no longer valid in the context of the present Guidance: taking into account all the foregoing matters, I conclude that whilst the building is isolated from services and facilities, this is not a matter which indicates that the location or siting of the building makes the proposed change of use impractical or undesirable.

11. Moreover, whilst other agricultural buildings adjoin the building across an open yard which is currently used for open storage of straw, and there is a large glasshouse opposite the building, there is no evidence to demonstrate that the active use of these structures would have an unacceptably detrimental effect on the living conditions of future occupiers of the building, whose circumstances in this respect would not be significantly different to those of the occupiers of the house on the opposite side of the junction.

12. Noting that no other substantial indicators of undesirability or impracticality arise from the evidence before me, I conclude on the main issue that the location and siting of the building are not such as to make the proposed change of use impractical or undesirable. There is accordingly no justification for withholding prior approval pursuant to paragraph Q.2 (1)(e).

13. Paragraph Q.2 (1)(a) requires the transport and highway impacts of the development to be assessed, and concerns are raised by interested persons. However, whilst Fourth Drove is very narrow, there are unlikely to be significant volumes of traffic along this minor road, and the surface of the short length of it leading to the appeal building is in a condition adequate to the needs of future residential occupiers of the building. I also saw on my visit that whilst there is a high hedge along the boundaries of the house on the opposite side of the junction, visibility along High Fen at the junction is reasonable in both directions. Noting also that neither the Council or the highway authority have objected to the transport or highways impacts of the proposal, I conclude that these impacts would not be such as to justify withholding prior approval.

14. There is no evidence that the proposed development would give rise to any significant noise impacts, or that there are any significant contamination or flooding risks on the site. As these issues, at paragraphs Q.1(b) to (d), are the only remaining matters for my assessment, it follows that I conclude that none of the matters set out at paragraph Q.2 (1)(a) to (e) are such as to indicate that prior approval should be withheld.

15. I have taken into account all other matters raised in the evidence before me, but nothing arises which disturbs the conclusions I have reached above. The appeal is therefore allowed, and prior approval granted. In reaching my

[2] Paragraph: 108 Reference ID: 13-108-20150305 Revision date: 05 03 2015
[3] Paragraph: 109 Reference ID: 13-109-20150305 Revision date: 05 03 2015

conclusions I have considered the conditions suggested by the Council in the event that I allow the appeal. The Council suggests a time limit condition, but its terms do not accord with those of the statutory time limit condition imposed by paragraph Q.2(3): in any event, the existence of the latter condition renders it inappropriate to impose any further time limit condition. The Council also suggests conditions requiring adherence to approved plans and requiring prior approval of building operations necessary to convert the building and of design and appearance. However, these conditions are unnecessary given that the proposal relates only to the change of use of the building and that proposals for any building operations would be the subject of separate assessment.

J Flack

INSPECTOR

Costs Decision

Site visit made on 14 September 2015

by J Flack BA Solicitor

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

Decision date: 22/09/2015

Costs application in relation to Appeal Ref: APP/A2525/W/15/3023010 Cattle Shed, High Fen Farm, Fourth Drove, Gosberton, Lincolnshire PE11 4JZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by V A Barker & Son for a full award of costs against South Holland District Council.
- The appeal was against the refusal of approval required under a development order.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The appellant asserts that the Council acted contrary to legislation, policy and guidance by refusing the application on sustainable location grounds. In its response, the Council refers to the assessment of any development proposed under Class Q(b), but this would be a matter for future and separate consideration. It is of no relevance to the present proposal, which is to be considered on its own merits.

4. However, in my appeal decision I have noted that the starting point of Class Q is the grant of permission for the change of use of agricultural buildings, which may be in unsustainable locations, but also the inherently broad meaning of "impractical" and "undesirable". Whilst I have concluded that the unsustainable location of the appeal building is not a matter which indicates that its location makes the proposed change of use impractical or undesirable, that conclusion has been reached in the present context of the amended provisions of the Guidance.

5. Those amendments represent a significant change in the circumstances relevant to the proposal, and were made some months after the Council's decision. In their absence, there was greater scope for a range of reasonable interpretation, and I do not consider that the Council's approach exceeded this. I also observe that the Council has accepted at appeal that its refusal is no longer justified in the context of the Guidance amendments, and it does not

appear that it has had any earlier opportunity to do so: whilst the appeal was made following the issue of the amendments, there is no indication that appellant made any prior inquiry of the Council as to whether it would continue to seek to sustain its refusal reason despite the amendments.

6. The appellant considers that one of the provisions of the amended Guidance demonstrates that an unsustainable location was not a reason for refusal as from April 2014. I do not concur. The relevant paragraph[1] makes reference to a change in procedure at that time, but the stated effect of that change was limited to clarification that the duty to consider the National Planning Policy Framework applied only to the extent relevant to the matters on which prior approval is sought. The change did not include amendment of the matters themselves, clarification of their scope in relation to sustainability of location being provided by later amendment to the Guidance[2].

7. I conclude that the Council's actions in refusing the application on the ground of unsustainability, and subsequently conceding this at appeal, have not amounted to unreasonable behaviour causing unnecessary or wasted expense.

8. The appellant draws attention to the reference in the heading to the Council's decision notice to the development having an unacceptable impact on the amenity of adjoining properties. The Council has stated at appeal that this was included by mistake, and to my mind it is clear that a drafting error had occurred. The heading does not read coherently or sensibly with the refusal reason that follows, and the terms of the latter indicate clearly that it is intended to be the full and sole explanation of the refusal. At the very least, it should have been obvious to the appellant that a drafting error had probably occurred: the costs of addressing the issue could thus have been avoided by seeking clarification from the Council prior to making the appeal, but there is no indication that the appellant did so. Therefore, whilst the appellant has chosen to address the heading at appeal, I am not satisfied that the Council's error has constituted unreasonable behaviour which has caused unnecessary or wasted expense.

9. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been not been demonstrated. The application for an award of costs is therefore refused.

J Flack

INSPECTOR

[1] Paragraph: 107 Reference ID: 13-107-20150305
[2] See Paragraph: 108 Reference ID: 13-108-20150305