

The Planning Inspectorate
Temple Quay House
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Bristol
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Our ref: DC/26/0279
Your ref: 6008220
Email: Sam.Nye@horsham.gov.uk

Dear Sir/Madam,

6008220 – Pemberley, Copsale Road, Maplehurst, West Sussex, RH13 6QY

Following the submission of the appeal against the refusal of a Prior Approval for the change of use of part of an agricultural building to a single dwellinghouse, the Local Planning Authority would refer the Inspector to the Delegated Report, and would like to further substantiate the reasons for refusal as follows:

Refusal Reason 1

The building is the subject of Condition 8 of planning permission reference DC/04/1463, which restricts part of the building to use for the storage of hay straw and machinery. As the proposed development includes the conversion of this restricted part of the building, it would be contrary to this condition. The proposed development would not therefore constitute permitted development under Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

The appellant details within their statement that limited weight should be attributed to Condition 8 of DC/04/1463, given the council has not previously relied upon this condition as part of previous application assessments. However, the absence of reference to a planning condition in earlier reports does not alter the presence, legality or effect of that condition, especially given those applications sought full planning consent and were considered under a different framework. The matter before the Inspector is whether the current proposal constitutes permitted development under Class Q having regard to Article 3(4) of the GPDO.

The building subject of this appeal, was approved under planning permission DC/04/1463:

DC/04/1463 – Erection of building comprising 6 stables, 2 tack rooms, store and storage area for hay, straw and machinery.

The storage area within this building was conditioned to remain as such, with Condition 8 of the permission stating:

‘8. The area of the building shown for storage for hay straw and machinery in connection with the land outlined in blue shall be used for that purpose only.

Reason: To accord with the terms of the application and to ensure the Council retains control over the use of the building’.

Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that '*(4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order*'.

Article 3(4) of the GPDO is clear in that development cannot proceed where it would be contrary to an existing planning condition. In this case, the submitted plans confirm the current proposal seeks to convert part of the storage area subject of the above condition to a residential use and therefore would conflict with the condition and therefore cannot constitute permitted development under Class Q.

The appellant refers to a decision by Horsham District Council (DC/25/0747), suggesting that a building subject to an agricultural occupancy condition was accepted under Class Q without that condition preventing reliance on permitted development rights. However, the application references provided by the Appellant are inaccurate, as AS/28/96 does not relate to the original permission. In fact, the building in question predates 1970 and consequently, there are no planning conditions associated with the building that would limit its use or remove permitted development rights. As such, the prior approval application (DC/25/0747) was correctly determined on the basis that no restrictive conditions applied. This case is therefore not comparable to the current proposal, where an condition limits the use of the building to agricultural purposes.

The council would respectfully draw the Inspector's attention to appeal APP/Z3825/W/25/3369471 (Windacres Farm, Horsham). In considering this appeal for a refusal of a prior approval for the change of use of an agricultural building to a single dwelling, the Inspector dismissed the appeal noting the below. This decision notice is provided at Appendix A.

'However, based on the details provided, it is apparent that the planning permission which approved the building to which this appeal proposal relates, was subject to a condition which permitted the premises to be used for agricultural purposes only, and for no other purposes whatsoever without express planning consent from the Council first being obtained. It is not within the remit of the appeal before me to assess the reasonability or otherwise of this condition in respect to the relevant tests within the National Planning Policy Framework (the Framework).

Nothing in the Order permits development contrary to any condition imposed by any planning permission granted. The building to which the appeal proposal relates is restricted by condition to be used for agricultural purposes only. It cannot change use through Class Q. I am therefore unable to conclude that the proposal would constitute permitted development in respect of Class Q(a) of the Order

As considerations in relation to prior approval are a follow-on condition stage under paragraph Q2, they can therefore only apply if the development is otherwise permitted development. The proposal would fail to constitute permitted development, there is therefore no need for me to consider whether prior approval is required'.

This approach is also consistent with appeal APP/Z3825/W/25/3367156 (Waterland Chalet, Horsham), in which the Inspector stated: '*Article 3(4) 'Permitted development' of the GPDO states that nothing in the Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 or Part 13 of the Act otherwise than by this Order. It is not clear from the evidence whether the building was lawfully implemented. If it was, given the condition imposed on the original permission restricted its use to agricultural, the proposal could not then benefit from the provisions of Class Q, unless the*

condition was varied or removed, neither of which has been presented'. This decision notice is provided at Appendix B.

In line with the appeal decisions above, the LPA remain of the view that building cannot be converted under Class Q, as the building does not benefit from permitted development rights and the proposal conflicts with Condition 8 of permission DC/04/1463 and cannot proceed under Class Q.

Refusal Reason 2

The submitted plans indicate that significant portions of the existing barn would remain outside the residential envelope and capable of continued agricultural or storage use. The proposed dwelling would therefore be directly adjacent to retained agricultural areas, resulting in an inherent conflict between residential occupation and agricultural activity. This relationship would be likely to result in unacceptable living conditions for future occupiers through noise and disturbance and would place unjustified constraints on the lawful use of the retained building. The Local Planning Authority considers that the location and siting of the building make the change of use impractical and undesirable, contrary to Class Q.2(1)(e) of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The submitted plans indicate that significant portions of the barn would remain outside the residential envelope and therefore capable of continued agricultural use. The proposed dwelling would therefore be directly adjacent to agricultural activity, sharing a party wall with an active agricultural unit, resulting in an inherent and unavoidable conflict, distinct from typical Class Q scenarios.

Whilst the appellant's comments regarding the current agricultural use of the building and wider site being limited in scale and nature are noted, this does not provide any guarantee that such activities would remain at this level in the future. Agricultural activity is inherently unpredictable and can fluctuate and intensify without planning control and so the future occupiers of the dwelling would have no control over the intensity of activities undertaken within this unit or the ownership of this part of the building or wider agricultural holding.

There is potential for future agricultural activities to generate noise, smells, disturbance, vehicle movements and other impacts that would be detrimental to the living conditions of future occupiers. This relationship is not a matter capable of resolution through condition, as it arises from the fundamental layout and physical arrangement of the retained building itself.

Within the Appellants statement, a number of appeal decisions have been identified to support their stance. Each case must be assessed on its own merits, but it is noted that these examples are fundamentally different to this application, in that all these appeals relate to the conversion of the application buildings as a whole, with no party wall being shared with a retaining agricultural use as this application proposes.

The Council respectfully draws the Inspector's attention to appeal APP/U2370/W/23/3319409 (White House Farm, Wyre in Appendix C), in which the Inspector considered the relationship between proposed Class Q dwellings and retained agricultural buildings, immediately adjacent the application building, used primarily for the storage of straw, fencing materials, fertiliser and agricultural machinery. In that case, notwithstanding the appellant's assertion that agricultural activities had ceased and there was no intention to recommence farming operations, the Inspector attached weight to the fact that the surrounding land and buildings retained a lawful agricultural use and recognised that future owners or occupiers may have different intentions. The Inspector concluded that the assessment should not be based solely on the appellant's

current circumstances, noting that agricultural activities and associated vehicle movements could recommence in the future and that the close relationship between the dwellings and retained agricultural buildings would make it undesirable for it to change from agricultural use to a use falling within Class C3. The proposal would not provide adequate living conditions for future occupiers of the proposed dwellings with particular regard to noise and odour.

Paragraph 109 of The PPG states that 'impractical or undesirable' are not defined in the regulations, and the LPA should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would 'not be sensible or realistic', and undesirable reflects that it would be 'harmful or objectionable'. Whilst not exhaustive, it provides some guidance in that a location of a building which would change use, 'may be undesirable if it is adjacent to other uses, such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals'¹.

In this case, there are no restrictions or conditions that restrict the nature of machinery that can be stored within the retained unit and as highlighted within the councils Environmental Health Team's consultation response, *'Part of the building is to remain in use as an agricultural store. Given the immediate proximity of this storage area to the proposed dwelling it is important that no herbicides, pesticides, fuels, oils or other potentially contaminative materials are stored'*.

For these reasons, the council considers that the relationship would result in unacceptable living conditions for future occupiers and would place unjustified constraints on the lawful operation of the retained agricultural building. The location and siting of the building therefore make the change of use impractical and undesirable for the purposes of Class Q2(1)(e).

Conclusion

The Council remain of the view that the scheme as submitted would fail to accord with Q.1(a) and Q.2(1)(e) of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The Inspector is therefore respectfully requested to dismiss the appeal. However, should the Inspector be minded to approve the appeal, a list of suggested conditions is attached to this letter.

Yours sincerely,

Sam Nye
Planning Officer

¹ Ref: Paragraph: 109 Reference ID: 13-109-20150305, Revision date: 05 03 2015
Available at: <https://www.gov.uk/guidance/when-is-permission-required>

List of Conditions

If the Inspector is minded to allow the appeal, the following conditions are recommended in order to mitigate potential impacts and ensure the development proceeds in an acceptable manner.

1. List of Approved Plans

2. Pre-Commencement Condition: No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site be submitted to and approved, in writing, by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site.The following aspects (b) – (d) shall be dependent on the outcome of the above preliminary risk assessment (a) and may not necessarily be required.
- (b) An intrusive site investigation scheme, based on (a) to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.
- (c) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (b) and an options appraisal.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The scheme shall be implemented as approved. Any changes to these components require the consent of the local planning authority.

Reason: As this matter is fundamental to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works and to ensure that any pollution is dealt with in accordance with Policies 24 and 33 of the Horsham District Planning Framework (2015).