Appeal Decision

Site visit made on 11 January 2016

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 09/02/2016

Appeal Ref: APP/R3325/W/15/3049381
Cranway Farm, Forton, Chard, Somerset TA20 2LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr Keith Robbins against the decision of South Somerset District Council.
- The application Ref: 14/03877/PAMB, dated 20 August 2014, was refused by notice dated 28 October 2014.
- The development proposed is the change of use of agricultural buildings to dwellinghouses.

Decision

1. The appeal is dismissed.

Procedural Matters

2. On 15 April 2015 the Town and Country Planning (General Permitted Development) (England) Order (GPDO) came into force which replaced the previous order dated 1995. However, the legislation provides that any applications made under the previous GPDO should be treated as if made under the new GPDO. The main consequence of this change is that Class MB development consisting of the change of use of agricultural buildings to dwellinghouses under Schedule 2, Part 3 of the 1995 Order became Class Q development in the 2015 Order. I shall consider the appeal accordingly.

3. The Council's first reason for refusal of the prior approval application related to the concern that the cumulative number of dwellings at the farm would exceed three and thus be in breach of former limitation MB.1(c). However, the Council has since confirmed its understanding that the limit of three does not include existing dwellings and as such this reason for refusal is no longer contested. I agree with the Council and so I shall not consider this issue any further.

4. Class Q development is subject to condition Q.2(1) in 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 for a number of matters. The one disputed by the Council, upon which the second reason for refusal is based, is Q.2(1)(a) the transport and highway impacts of the development. The Council is concerned about the suitability of the access to the farm off Forton Road to serve the proposal.

5. The appellant has also referred to the Council's alleged failure to comply with what is now paragraph W(11)(c) under Part 3 in that the Council did not notify the applicant as to whether prior approval was given or refused within the requisite 56 days from the date that the application was received by the local planning authority.

Main Issues

6. In view of the above, the main issues and the order in which I intend to deal them are as follows:

   - Did the local planning authority notify the applicant as to whether prior approval was given or refused within the requisite 56 days;
   - The effect of the appeal development on highway safety;

Reasons

56 days

7. The application was initially received by the local planning authority on 26 August 2014 and the date on the Council's decision notice is 28 October 2014. On its face therefore the authority was 7 days too late in its notification to the appellant. However, under paragraph W of Part 3 of the GPDO *'Procedure for applications for prior approval under Part 3'* certain provisions apply where under this part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required. Provision W(2) states that *"the application **must** be accompanied by…any fee **required** to be paid"* (my emphasis).

8. In this case the fee originally sent with the application was not correct. As a matter of fact therefore on 26 August 2014 the application was not accompanied by *"any fee required to be paid"*. Whether or not this was down to an error or a miscommunication over the amount required, the correct fee was not paid until 3 September 2014. It was only at that stage that the application was accompanied by the required fee. As set out under W(11)(c) the 56 days would expire following the date on which the application under sub-paragraph (2) was received and that must include the required fee. It is noted that the 2015 GPDO uses the phrase *"the application must be accompanied by"* whereas in the previous Order the phrase was *"the application shall be accompanied by".* I do not agree that *shall* has a lesser and not compulsory meaning as compared to *must*. Nevertheless, bearing in mind what I have set out above the appeal is now to be considered under the provisions of the 2015 GPDO.

9. As a matter of fact and degree the local planning authority did notify the applicant as to whether prior approval was given or refused within the requisite 56 days.

Highway Safety

10. The Local Highway Authority has stated that in accordance with the advice in 'Manual for Streets' (MfS), based on the 30mph traffic speed limit along Forton Road, the visibility splays required for emerging drivers are 2.4m x 43m in either direction. Although it has been suggested that traffic speeds may be

less than 30mph there is no substantive evidence to back up this claim. It thus seems reasonable to apply the MfS requirements based on the speed limit.

11. Despite the appellant's submitted evidence about the availability of such splays, I checked the situation for myself at the site visit. At about 43m away on the nearside road edge either side of the site access, due to the hedge next to the road I was not able to see the Council officer who was stood in the access 2.4m back from the carriageway edge. When the officer moved forward to only 2m back, which may be an acceptable 'x' distance in some situations, it was still not possible to see that the required visibility on the 'y' arm of the splay could be achieved.

12. It seemed to me that in order to be able to see oncoming vehicles from far enough away so as to pull out safely, the vehicle would have to be nudged forward so that the driver would be about 1.4m back. However, the bonnet of the vehicle would then be protruding out into the highway. This would not be appropriate particularly given the relative narrowness of the road at this point meaning that when two cars are passing each other they are likely to be very close to the road edge. There is a clear and significant risk therefore of an emerging driver not having adequate visibility of oncoming vehicles and other road users thus seriously increasing the likelihood of a collision.

13. Looking at the appellant's photographs showing a vehicle emerging from the site access, these do not appear to have been taken at the nearside edge of the carriageway in accordance with where the 'y' arm of the splay should be taken to as set out in MfS. Moreover, there is no confirmation that the driver is at a position 2.4m back. The driver appears to be much closer than that. As such they give a misleading impression of what an emerging driver may be able to see. It is acknowledged that the roadside hedge is more trimmed in the photographs than when I visited and the local highway authority has reduced hedge maintenance. However, this would provide only limited improvements to driver views and would not address serious visibility shortcomings. I have also had regard to the appellant's highway visibility sketch plan. However, the relevant splays have not been marked on and the A4 size of the plan does not allow the full splays to be measured. In these circumstances I cannot accord this evidence any significant weight.

14. Turning to the frequency of use of the access the appellant advises that there has been a significant reduction in traffic at Cranway Farm since it ceased to be a dairy farm. Although it is stated that the farm is still working, when I visited the site there appeared to be very little farm activity. There is also no detailed evidence about how many movements the farm had in the past other than reference to a milk collection lorry or how many there is now or could be.

15. I agree with the LHA that a typical dwelling generates between 6-8 vehicle movements a day. Given the appeal site's rural setting and the lack of continuous footways along the road into Chard or Forton to access services or catch the bus, it is likely that occupiers of the proposed houses would regularly rely on their car to go to and fro. As such the vehicle movements would not be less than the average. Against this background and taking account of the existing dwelling at the farm and the other house served by the track, the appeal scheme would lead to a material increase in traffic. Even if the farm traffic was to increase, to my mind a further 18-24 vehicle movements would

still materially intensify the use of the access with the clear substantial harm to highway safety as a result.

16. The access may not be perpendicular to the road but it is wide enough to accommodate two cars swinging in and out. Furthermore, the use of the separate agricultural entrance just inside the access does appear to be used very infrequently. Therefore I do not share the other highway authority concerns about the potential for these factors to increase the risk to road safety. However, this finding does not persuade me away from my previous strongly held concerns.

17. The appellant may not know of any accidents at the junction with Forton Road. However, that does not mean that accidents could not happen. The change in circumstances related to the appeal scheme lead me to the firm conclusion that the highway impacts of the development would be serious and unacceptable. The proposal may not generate the levels of movement envisaged by the first sentence of paragraph 32 from the National Planning Policy Framework that would require a Transport Statement or Transport Assessment. However, paragraph 32 also requires decisions to take account of whether safe and suitable access to the site can be achieved for all people. For the reasons given the proposal would not meet this aim.

Other Matters

18. Although not a reason for refusal, in its appeal statement the Council has raised concern about the structural integrity of the building in the context of what is proposed and how that relates to advice at paragraph 105 of Planning Practice Guidance and limitation Q.1(i) of the GPDO which sets out the extent of building operations reasonably necessary to enable the dwellinghouse function. I have read the evidence from both sides on this matter. However, the appeal is failing for the substantive reasons given above and a finding on this matter would not make any difference to the appeal outcome. Consequently I do not need to consider the structural matter any further.

19. No other matters raised outweigh the above findings.

Conclusion

20. For the above reasons it is concluded that the appeal should be dismissed.

Gareth Symons

INSPECTOR