

REPORT FOR DECISION

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| DECISION OF: | PLANNING CONTROL COMMITTEE |
| DATE: | 19 September 2017 |
| SUBJECT: | PLANNING APPEALS |
| REPORT FROM: | HEAD OF DEVELOPMENT MANAGEMENT |
| CONTACT OFFICER: | DAVID MARNO |
| TYPE OF DECISION: | COUNCIL |
| FREEDOM OF INFORMATION/STATUS: | This paper is within the public domain |
| SUMMARY: | <p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals: None</p> <ul style="list-style-type: none"> - Lodged - Determined |
| OPTIONS & RECOMMENDED OPTION | The Committee is recommended to the note the report and appendices |
| IMPLICATIONS: | |
| Corporate Aims/Policy Framework: | Do the proposals accord with the Policy Framework? Yes |
| Statement by the S151 Officer: Financial Implications and Risk Considerations: | Executive Director of Resources to advise regarding risk management |
| Statement by Executive Director of Resources: | N/A |
| Equality/Diversity implications: | No |
| Considered by Monitoring Officer: | N/A |
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| Wards Affected: | All listed |
| Scrutiny Interest: | N/A |

TRACKING/PROCESS

DIRECTOR:

| Chief Executive/ Strategic Leadership Team | Executive Member/Chair | Ward Members | Partners |
|--|---------------------------|--------------|----------|
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| Scrutiny Committee | Committee | Council | |
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1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Decided
between 14/08/2017 and 10/09/2017**



Application No.: 61048/FUL

Decision level: COM

Recommended Decision: Approve with Conditions

Applicant: Unsworth Smile Clinic

Location: 57 Parr Lane, Bury, BL9 8JR

Proposal: Second floor extension to form three storey building

Appeal Decision: Allowed

Date: 18/08/2017

Appeal type: Written Representations

Application No.:

Decision level: DEL

Recommended Decision: Prior Approval Required

Applicant: Mr Roy Holland

Location: Whittles Farm Barn, Turton Road, Tottington, Bury, BL8 3QQ

Proposal: Prior approval for the proposed change of an agricultural building to 1 no. dwellinghouse (Class C3), and for associated operational development under Part 3 Class Q (a) and (b) of The Town And Country Planning (General Permitted Development) Order 2015

Appeal Decision: Dismissed

Date: 18/08/2017

Appeal type: Written Representations



Appeal Decision

Site visit made on 25 July 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 18th August 2017

Appeal Ref: APP/T4210/W/17/3176167

57 Parr Lane, Unsworth, Bury, BL9 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Unsworth Smile Clinic against the decision of Bury Metropolitan Borough Council.
 - The application Ref 61048, dated 22 January 2017, was refused by notice dated 1 March 2017.
 - The development proposed is the vertical extension of the existing property from a two storey building to a three storey building.
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Decision

1. The appeal is allowed and planning permission is granted for the vertical extension of the existing property from a two storey building to a three storey building at 57 Parr Lane, Unsworth, Bury, BL9 8JR in accordance with the terms of the application, Ref 61048, dated 22 January 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 9297-001a- Location Plan; 9297-011b- Existing & Proposed Floor Plans; 9297-021b-Existing & Proposed Elevations.
 - 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development 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 / samples.
 - 4) Before the first occupation of the extension hereby permitted the windows on the north elevation of the second floor extension shall be fitted with obscured glazing (minimum level 3) and shall be permanently retained in that condition thereafter.
 - 5) No development shall commence unless and until full details of the following have been submitted to and agreed with the Local Planning Authority:
 - i) A method statement to cover all works/activities abutting the unadopted footway on Parr Lane, including the provision, where necessary, of temporary pedestrian facilities/protection measures;

- ii) Parking on site or on land within the applicant's control of operatives' vehicles together with storage on site of construction materials.

The details subsequently approved shall be implemented to an agreed programme and to the satisfaction of the Local Planning Authority, with the measures retained and facilities used for the intended purpose for the duration of the construction period.

Main Issue

2. The main issue is the effect of the development proposed on the character and appearance of the area.

Reasons

3. The appeal property is a two storey building operating as a dental clinic situated within a busy local shopping centre. The wider area is residential in character.
4. The development proposed would see the vertical extension of the building to form a three storey property so as to provide additional space to meet the needs of the existing clinic. The extension proposed would have a flat roof design and would increase the height of the building by approximately 2.7m taking the overall height to approximately 10.6m. The original application to which this appeal relates was refused at Planning Committee contrary to the recommendation of the Council's officer.
5. The appeal property is situated between a single storey medical centre and a row of single storey shops with a flat roof design. There are examples of two storey and three storey properties in the surrounding area. The visual appearance of the appeal building and the neighbouring row of shops is functional in nature. There are blocks of residential properties on the opposite side of the road which are also of a different design. The appeal building is therefore situated within a busy, local shopping centre where there is some diversity in the streetscene in terms of scale, design and visual appearance.
6. The appeal building has a simple, utilitarian appearance that is of no particular architectural merit. The proposal would see the addition of a single-storey extension that would be off-set from the front of the building. Whilst the proposed extension would alter the visual appearance of the property, the use of a light-weight steel structure with metal cladding and glazing would ensure a visually low key, modern addition that would not be seen as an incongruous feature in the context of the diversity in design that exists in the area.
7. Accordingly, I conclude that the development proposed would not be harmful to the character and appearance of the area. The proposal would therefore not conflict with policy EN1/2 of the Council's Unitary Development Plan Policy or their Supplementary Planning Document 16 'Design and Layout of New Development in Bury' which together seek to ensure that proposals do not have an unacceptable adverse effect on the character and townscape of the area.

Other Matters

8. The Council officer's report acknowledges that the dental clinic is a valuable community facility and that the principle of an extension to the existing

building to expand the existing facilities would be welcome, subject to certain criteria. I have already concluded that the design of the proposal would be acceptable.

9. Based on the separation distances between the appeal property and neighbouring properties and subject to a condition requiring obscure glazing to be fitted in the proposed north elevation, I am also satisfied that the effect on the amenity of local occupants would be acceptable.
10. In terms of the effect of the proposal on parking in the area, the appellant states that the clinic operates under an NHS contract and that the number of staff and patients would not increase as a consequence of the proposal. Rather the proposal is intended to improve facilities for the existing staff and patients. Whilst I acknowledge the concerns of local residents regarding parking in the local area, the location is well served by public transport and there is a high number of residential properties within walking distance of the clinic. I also understand that there is a car park nearby that patients visiting the clinic can use for a small fee. Based on the information before me, the appeal property is in a location that is accessible via public transport and there is some off-street parking provision provided for existing patients. I am therefore satisfied that the proposal would be acceptable with regard to its effect on parking.

Conclusion and Conditions

11. For the reasons given above, I conclude that the appeal should be allowed.
12. I have considered the Council's suggested conditions in line with the advice in the Framework and the Planning Practice Guidance (PPG).
13. I have attached a commencement condition and a condition requiring the development to be carried out in accordance with the submitted plans, to define the terms of this permission and for the avoidance of doubt. I have also attached a condition requiring the submission of samples/details of the materials to be used in the construction of the external surfaces of the development to ensure there will be no harm to the character or appearance of the area.
14. I have also attached a condition requiring the windows in the north elevation of the extension to be fitted with obscure glazing to ensure that the development would not be harmful to the living conditions of neighbouring occupants in regard to privacy.
15. A condition is also necessary requiring details of works next to the footpath and the storage of materials and parking during the construction period to ensure that the development will not be harmful to pedestrian and highway safety.

V Lucas-Gosnold

INSPECTOR



Appeal Decision

Site visit made on 17 July 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 18th August 2017

Appeal Ref: APP/T4210/W/17/3174779

Whittles Farm Barn, Turton Road, Tottington, Bury, BL8 3QQ

- 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 Roy Holland against the decision of Bury Metropolitan Borough Council.
 - The application Ref 61220, dated 5 March 2017, was refused by notice dated 28 April 2017.
 - The development proposed is prior approval application for the conversion of an agricultural building to form a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Regarding the description of the development proposed, the original application form states that reference should be had to the planning statement submitted. I have therefore taken the description of the proposal from the title of the planning statement.
3. The GPDO requires the local planning authority to assess the proposed development against the criteria set out in Class Q, taking into account any representations received. My determination of this appeal has been made in the same manner.
4. Schedule 2, Part 3, Class Q of the GPDO 2015 sets out that development is classed as permitted development if it consists of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of that Schedule.
5. This is subject to a number of situations where such development is not permitted, listed under paragraph Q.1, and to conditions in paragraph Q.2 setting out the circumstances when an application to the local planning authority for the determination as to whether the prior approval of the authority will be required.
6. In determining the application, the Council have referred to the 'Hibbitt'¹ case where it was held the building must be capable of conversion to residential use

¹ Hibbitt v SSCLG [2016] EWHC 2853).

- without operations that would amount either to complete or substantial re-building of the pre-existing structure in order for a proposal to benefit from Class Q of the GPDO. The Council concluded that the scheme would not be permitted development on that basis and as such neither Q.1 nor Q.2 would be applicable.
7. However, the Council have also referred to Q.1 (i) where the development proposed would consist of building operations other than those listed to the extent reasonably necessary for the building to function as a dwellinghouse. The Council concluded that the scheme would not be permitted development in this regard either.
 8. Notwithstanding that the Council concluded that the proposal was not permitted development it went on to consider whether prior approval would be required regarding the issues raised under paragraph Q.2(1). The Council, in consultation with Environmental Health, also refused to grant prior approval under part (c) which refers to contamination risks on the site. This is because no contaminated land assessment was submitted with the application.
 9. The Council have not raised concerns with reference to any of the other matters identified at paragraph Q.2, as to matters that could require the Council's prior approval, and therefore I have taken this to mean that the Council concluded that prior approval would not be required for those matters.
 10. I have considered the appeal on this basis.

Main Issues

11. Taking account of the above, I therefore consider the main issues to be:
 - Whether the development proposed would be permitted development under the provisions of Class Q of the GPDO. In particular, whether the extent of the works proposed works would fall within the statutory limits; and whether the proposal would consist of building operations to the extent reasonably necessary for the building to function as a dwellinghouse and thereby be excluded by Schedule 2, Part 3, Class Q.1 (i);
 - If the proposal is permitted development under the provisions of Class Q.2 of the GPDO, whether the development would be acceptable in terms of the contamination risks on the site.

Reasons

Whether permitted development

12. The appeal building is a barn that has been used as an agricultural store. The building has a wooden frame construction. The elevations and roof are clad with corrugated cement board. In some places corrugated metal sheet has been used. There are large openings on two elevations.
13. The development proposed would see the conversion of the building to form a dwelling. The proposal would see the replacement of the existing cladding with Yorkshire boarding and lightweight insulated cladding on a steel frame. A new plastic coated corrugated steel roof would also be installed.

14. A prior approval application for a similar scheme was previously refused by the Council. This appeal proposal represents a slightly revised scheme that is intended to overcome the previous reasons for refusal.
15. As to whether or not the proposal would comply with Q. (b) and therefore fall within the development permitted by the Order, it is necessary to consider whether the building operations are reasonably necessary to convert the building to a use falling within Class C3(dwellinghouses). A definition of 'building operations' is not contained within Q. (b). Rather this is set out in Q.1 (i). Therefore in practical terms, when coming to a view on the proposal I consider that it is useful to assess the extent of the building operations proposed in the context of Q. (b), Q.1 (i) and also the advice set out in the PPG.
16. Planning Practice Guidance (PPG) gives advice on whether operations are 'reasonably necessary' or not. In regard to building works allowed under Class Q.1 (i) to change an agricultural building to residential use, the PPG states that the permitted development right assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted.
17. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.
18. The Council's building control department have advised on the works that they consider would be necessary to convert the building to a dwelling. These include the re-laying of the internal floor to include appropriate insulation and damp proof membranes and the likely need to undertake significant remedial / strengthening work to the timber frame of the building so it is able to take the weight of the increased loads from the proposed new roof covering, insulation and plasterboard.
19. Based on the information before me, there would be little left of the existing appeal building as a consequence of the proposal other than the structural timber frame. There would be new walls, a new roof, new flooring, existing openings would be closed and new ones created. The building works necessary to alter the existing building to a dwelling would therefore be extensive.
20. The appellant states that the proposed alterations to the building are reasonably necessary for the conversion. A letter dated January 2017 was submitted with the appeal from MPA Associates. This states that they are satisfied that the conversion measures would have no adverse effect on the structural performance of the existing structural framework of the building. However, there is no technical report attached to the letter setting out a detailed assessment of the structure of the existing building or a commentary

explaining how this conclusion was reached. For example, there is no structural method statement or structural calculations included.

21. It is reasonable to conclude that the proposed new roof covering, the Yorkshire boarding, lightweight insulation and plaster board would result in an increased load on the timber frame structure of the building when compared with the existing situation. However, in the absence of a detailed structural survey that clearly sets out an assessment of the appeal building and addresses the specific concerns raised by the Council's building control, I cannot be certain as to whether or not the existing timber frame could bear the structural load necessary to facilitate the proposal.
22. As set out above, the PPG states that the building would only be considered to have the permitted development right where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use. In the case of the appeal building, based on the evidence before me, it is likely that significant remedial and or strengthening work to the frame of the appeal building would be necessary so it is able to support the increased loads as a result of the proposed conversion works.
23. Accordingly, I consider that the proposal would consist of building operations that would go beyond what is reasonably necessary for the building to function as a dwellinghouse. Given this conclusion Class Q.1(i) would preclude the buildings from benefitting from permitted development under class Q.
24. In the context of the Order, the starting premise is that the permitted development right grants planning permission, subject to the prior approval requirements. Therefore the suggestion of allowing the appeal subject to a condition approving the principle of the change of use alone would not be in accordance with the provisions of the Order.

Prior approval

25. As I have concluded that the building cannot benefit from permitted development it is not necessary for me to consider the issue of prior approval in relation to contaminated land as the provisions of Class Q.2 are not applicable.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

V Lucas-Gosnold

INSPECTOR