
Appeal Decision

Site visit made on 20 September 2016

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 5th October 2016

Appeal Ref: APP/U1105/W/16/3148091

Land East of Longbrook Lane, Longmeadow Road, Lymestone, EX8 5LL.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs Rory Estcourt against the decision of East Devon District Council.
 - The application Ref 15/2484/PDQ dated 9 October 2015, was refused by notice dated 23 December 2015.
 - The development proposed is conversion of an existing agricultural building into a single dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal satisfies the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) with regard to being permitted development under Schedule 2, Part 3, Class Q.
 - If so, whether planning permission is deemed to have been granted by reason of the timing of the Council's decision.

Reasons

Permitted Development

3. The GPDO enables certain types of development to take place without the need for specific planning permission, provided certain criteria are met. Provisions exist under Schedule 2, Part 3, Class Q for the change of use of an agricultural building to a dwellinghouse, subject to limitations. In refusing the application, the Council states that insufficient evidence has been provided to demonstrate that the building falls within the definition of an 'agricultural building'.
 4. Paragraph X. provides an interpretation of Part 3 (of the GPDO) and gives the definition of an 'agricultural building' as a building used for agriculture and which is so used for the purposes of a trade or business. Also, under paragraph Q.1 (a)(i) development is not permitted under Class Q if the site was not used
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solely for an agricultural use as part of an established agricultural unit on 20 March 2013.

5. The use on that date is a question of fact to be determined on the evidence provided. However, both tests have to be passed for the provisions of Class Q to apply. In other words, even if a building was in agricultural use on 20 March 2013, if the use has changed by the time the appeal is being considered, the Class Q permitted development right does not apply.
6. The building subject to this appeal is constructed from a mix of timber and metal cladding. The roof is partly covered with corrugated metal sheeting and the remainder is covered with timber/felt or plastic sheeting. The building is situated within a field that has been used for hay making and grazing by a farmer as an extension to his agricultural holding located in the Exmouth area. The farmer has confirmed that he used the building for the "storage of hay, implements and occasionally isolating sick sheep / lambs".
7. The appellants state that the building has been in existence for several years and was used solely for agricultural purposes on the material date of 20 March 2013. Since 2014, however, the building has been redundant for agricultural purposes. The appellants advise that their intention was to use the building as a workshop and garage but this never materialised. Nevertheless, at the time of my site visit, there were two vehicles parked in the building and part of it appeared to be used as a workshop and for the storage of timber. This domestic use is consistent with the photographs provided by the Council, taken during the officer's site visit on 10 November 2015. These show the same two vehicles parked in the building and an area in use as a workshop / timber storage. Consequently, I find that, as a matter of fact and degree, the current use of the appeal building is for domestic storage. Therefore, the provisions of Class Q do not apply and the proposal does not satisfy the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 3, Class Q.

Timing of the Council's decision

8. Where the proposal is development under Class Q, the developer must apply to the local planning authority, before beginning the development, for determination as to whether prior approval is required (paragraph Q.2. (1) of the GPDO). Under paragraph W (11)(c) the development must not begin before the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as whether prior approval is given or refused.
9. There is no dispute that the Council's decision was made after the 56 days had passed. However, the requirement for prior approval and the 56 day period only becomes relevant if the proposed development falls within the permitted development right. Therefore, as I have concluded that the development falls outside the permitted development right, there is no need to make a determination on whether planning permission is deemed to have been granted by reason of the timing of the Council's decision.

Other Matters

10. I note that a Unilateral Undertaking¹ has been submitted in relation to a sum of money to be paid to the Council as a habitat mitigation contribution. However, as I have found the proposal to be unacceptable for the reasons stated above, it has not been necessary to consider whether the Unilateral Undertaking would satisfy the tests under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the National Planning Policy Framework.

Conclusion

11. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be dismissed.

Debbie Moore

Inspector

¹ Made under Section 106 of the Town and Country Planning Act 1990 (as amended)