
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/X1118/W/16/3149656

Oakleigh, Road From Forches Cross to Abbotsmarsh Wood, Burrington, Devon EX37 9NF

- 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 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Michael Hill against the decision of North Devon District Council.
 - The application Ref 60090, dated 7 October 2015, was determined by notice dated 9 November 2015.
 - The development proposed is described as "simple apex roofed wooden building for secure and dry storage of processed woodland produce and forestry enterprise management".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Michael Hill against North Devon District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The site has a planning history which is relevant to this appeal. A prior notification application for the erection of a multi-purpose forestry building under Class A of Part 7 of the Schedule to the Town and Country Planning (General Permitted Development) Order 1995 was made in February 2012. On the basis of the information supplied, the Council confirmed that it did not require prior approval of siting, design or appearance of the forestry building.
4. A building was subsequently erected on the site of the approved forestry building. However, this was not built in accordance with the details submitted to the Council. The building was roofed in slate and measured 16.2m long, 6.2m wide, the eaves height was 2.9m and the ridge was 4.75m. An enforcement notice (Ref ENF 8362) was issued by the Council on 4 September 2014, which was subsequently upheld on appeal.¹ The Inspector concluded that the building "was not designed for, and is not suited to, use as a general purpose non-residential forestry building".

¹ Appeal Ref APP/X1118/C/14/2225974 dated 22 July 2015.

5. The Council advises that compliance with the requirements of the enforcement notice, which comprises the removal of the building, has been sought. The Council's Enforcement Officer has written to the appellant² advising that he visited the site on 22 July 2016 and the unauthorised building had not been removed from the land as required.
6. At the time of my site visit, there was a building on the site which was consistent in terms of its siting and external appearance with the details submitted with the application subject to this appeal. The appellant advises that this building was sited in June 2016, however, the Council disputes this. This point is critical to the determination of the appeal as prior approval cannot be given for development that has already taken place.
7. Works for the erection, extension or alteration of a building on land for the purposes of forestry are permitted development under Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 6, Class E, subject to certain conditions. Paragraph E.2.(1a) states that the developer must, before the beginning of development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. In other words, development is not permitted by Class E if the development had begun before an appropriate application had been made to the Council. I consider this point in detail below.

Main Issues

8. The main issues are:
 - Whether the proposal satisfies the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) with regard to being permitted development under Schedule 2, Part 6, Class E.
 - If so, whether planning permission is deemed to have been granted by reason of the timing of the Council's decision.

Reasons

Permitted Development

9. As set out above, there was a building on the site prior to an application being made to the Council. The appellant maintains that the current building is a different structure to that which was subject to the enforcement notice, albeit that is virtually identical in size and external appearance. The appellant's agent states³ that in June 2016, his client employed a specialist log cabin contractor to lift the unauthorised building from the site and re-install a building consistent with the details provided within the application for prior approval.
10. However, there is no evidence to demonstrate that this removal took place or that the building on site differs materially from the unauthorised building. During my site visit I noticed that there were curtains to the windows and there was a flue of the sort that normally serves a wood burning stove. These features are more consistent with a residential use than a forestry building.

² Letter dated 22 July 2016

³ Email dated 15 August 2016

11. Moreover, it is clear that this building has been altered since it was first erected. The end gable is of a different cladding material to the remainder of the building and the door appears to have been reduced in size. This is consistent with the Inspector's description of the unauthorised building. The Inspector describes a building that initially had a veranda area, which was subsequently "clad similarly to the rest of the building and incorporated into it, with solid timber external doors".
12. The similarities between the building currently on site and that which was subject to the enforcement appeal are striking. Therefore, I conclude that the structure was, on the balance of probability, present on site prior to the application for prior approval being made.
13. Consequently, considered overall and for the above reasons, I conclude that the proposal does not meet the requirements of Schedule 2, Part 6, Class E of the GPDO. The Council's decision may or may not have been made within 28 days following the date of receiving the application, as required by the condition set out in E.2.(1)(c) of the GPDO. Nevertheless, the building would not be 'permitted development' under these provisions and a specific planning permission for it would be required. In view of this conclusion it is not necessary for me to consider whether planning permission is deemed to have been granted by the timing of the Council's decision.
14. In reaching this conclusion, I have had regard to the appeal decisions submitted by the appellant. In every case, the appeal circumstances were different to that which is before me. I have determined the appeal on the basis of the facts and evidence submitted by the parties and my observations made on site.
15. I conclude, therefore, that the appeal should be dismissed.

Debbie Moore

Inspector