
Appeal Decision

Site visit made on 11 October 2016

by Clive Nield BSc(Hon), CEng, MICE, MCIWEM, C.WEM

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

Decision date: 21 October 2016

Appeal Ref: APP/W1145/C/16/3152829

Land at Broadparks Deer Farm, Winkleigh, Devon, EX19 8JL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Leslie Arscott against an enforcement notice issued by Torridge District Council.
 - The enforcement notice, numbered 07/2016, was issued on 24 May 2016.
 - The breach of planning control as alleged in the notice is: (a) without planning permission, unauthorised operational development by the erection of a wooden structure for residential purposes, which has been built within the agricultural barn, together with the installation of services and domestic equipment for residential use; and (b) without planning permission, the material change of use of the land from the use for agriculture to the mixed uses of agriculture and residential use.
 - The requirements of the notice are: (i) cease the residential use of the land; (ii) remove the unauthorised wooden structure; and (iii) remove all the resulting debris from the removal of the unauthorised structure.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected by the deletion of paragraph 3(b) and varied by the deletion of requirement paragraph 5(i). Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Main Issue

2. The main issue in an appeal on ground (c) is whether or not a breach of planning control has occurred, and in this case there are 2 alleged breaches to be considered: operational development by the erection of a wooden structure for residential purposes; and change of use of the land.

Reasons

3. It is common ground between the main parties that an application for prior approval was made in October 2014 in respect of change of use of the barn to a dwelling, that the Council's subsequent refusal notice was issued out of time, and that consequently prior approval was deemed to be granted. That application preceded the current Town and Country Planning (General Permitted Development) (England) Order 2015 and was made under the previous provisions for permitted development, the 1995 Order which was

subject to a number of amendments. The application was made in respect of (at that time) Class MB(a) of Part 3 of Schedule 2 of the 1995 Order, which was added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 which came into effect on 6 April 2014.

4. It is pertinent that Class MB was in 2 parts: MB(a) *"a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order"*; and MB(b) *"building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule"*.
5. The prior approval application was made only in respect of Class MB(a), and so the deemed approval granted by the Council's failure to determine the application within time was solely for the change of use and not for any associated building operations. The Council says Mr Arscott intended to submit a further application under Class MB(b) but never did so.
6. The Council also now says that its previous acknowledgment that deemed prior approval was granted was incorrect and that, in fact, the application did not fall within the specified criteria for prior approval. If that is the case, it submits that the land does not benefit from permitted rights for the change of use. It makes essentially 3 arguments to support this contention.
7. The first was stated in the Council's intended refusal notice (albeit a refusal that was too late) and is that, as the barn had been constructed less than 10 years before, it could not be converted to a dwellinghouse under Class MB due to the terms of paragraph MB.1(f) of the 1995 Order. Paragraph MB.1 specifies criteria where development is not permitted by Class MB, and sub-paragraph (f) says *"development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit since 20th March 2013, or within 10 years before the date development under Class MB begins, whichever is the lesser"*. However, the barn was built before 20 March 2013 and the 10 years rule only comes into play for development carried out later than that. Thus, it does not apply in this case.
8. The second argument is that the prior notification for erection of the barn was only issued in February 2011, less than 4 years before the application for change of use was received, which casts doubt on whether it was ever reasonably required for agricultural purposes. However, the Council has no evidence on Mr Arscott's agricultural business, and I have no reason to suspect that the barn was not used for agricultural purposes during that 3-4 years period. Thus, the Council's argument carries little weight.
9. Finally, the Council says the prior approval application was not supported by information on possible protected species or a structural survey to confirm the suitability of the barn for conversion, and it has provided evidence of a legal opinion on the interpretation of the Class Q provisions in the Current 2015 Order (the equivalent Class in the 2015 Order), which confirms that Councils can reasonably require such information. However, in this case, the Council made no such request and I do not consider the Appellant's failure to include it in his prior approval application necessarily makes it non-compliant.

10. Thus my conclusion on the Council's arguments is that they do not negate the deemed approval for change of use granted by the Council's failure to determine the application in the prescribed time. As a consequence the change of use is lawful and does not amount to a breach of planning control, and I will correct the enforcement notice to remove reference to this and amend its requirements accordingly. The appeal on ground (c) succeeds to this extent.
11. Having said that, in practical terms it is not easy to see how the modern barn can be converted to a dwellinghouse without substantial rebuilding work, which requires further approval. The operational development that has taken place to facilitate the current residential use, comprising a wooden structure along one side of the barn, does not fall within the permitted rights granted for change of use.
12. The Appellant argues that it is a temporary wooden structure built within the barn and that it does not materially affect the external appearance of the barn. It is also argued that internal works that will not eventually form part of the external envelope of the building do not need planning permission. However, these assertions are quite misplaced. The wooden structure is substantial in size and construction, is connected to all services, and internally is fitted out to high standards to provide comfortable residential accommodation. Despite its misleading external appearance, it is a purpose built dwelling with a high degree of permanence, and it has a significant effect on the appearance of the barn and the character of the local area. By no stretch of the imagination can it be considered to be a temporary structure. Furthermore, it does currently have the appearance of forming part of the external envelope of the barn, and there is no obvious prospect of that changing in the foreseeable future.
13. Mr Arscott has also suggested that the structure falls within the definition of a caravan as it would be possible to lift it in one piece and transport it to another location. However, that overlooks the primary element of the definition of a caravan, which is that it is "composed of no more than 2 sections separately constructed and designed to be assembled on a site by means of bolts, clamps and other devices" (ref. Section 13(1) of the Caravan Sites Act 1968). In fact, the structure was built on the site from basic raw materials. Thus, notwithstanding that it may meet some of the criteria for definition as a caravan, it is without doubt a building.
14. Drawing all of these matters together, my conclusion is that the structure is a building rather than a caravan, that its construction does not fall within the permitted development rights for change of use which were the subject of the deemed permission, and that it is a building that requires planning permission. No such permission exists, and so it amounts to a breach of planning control. The appeal on ground (c) fails in this respect.
15. There has been some doubt as to whether ground (a) and the deemed application for planning permission for the alleged breach (under section 177(5) of the Act as amended) fall to be considered. No fee has been paid but Mr Arscott submits that it should be exempt from the fee as a fee was paid in respect of the prior approval application. It is not clear whether that would be applicable but, even if it were, that fee was paid in respect of an application for change of use rather than the operational development which is the subject of the enforcement notice (as corrected and amended), namely the erection of a structure for residential purposes. Thus that fee would not justify exemption of

the fee in respect of the enforcement notice and, in the absence of payment or exemption of the fee, the planning merits of the development do not fall to be considered.

16. For the reasons given above I conclude that the appeal should succeed in part only on ground (c), and I will correct the notice to delete the allegation concerning change of use and vary its requirements similarly. Subject to these corrections and variations, I will uphold the enforcement notice.

Clive Nield

Inspector