The Planning Inspectorate

Appeal Decision

Site visit made on 24 August 2016

by David Walker MA MRTPI

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

Decision date: 4 November 2016

Appeal Ref: APP/Y1138/W/16/3150911
Building to land at NGR 306760/119767, nr Holcombe Rogus, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mrs F Gibbins against the decision of Mid-Devon District Council.
- The application Ref 16/00061/PNCOU, dated 11 January 2016, was refused by notice dated 4 March 2016.
- The development proposed is change of use of agricultural barn to a dwelling.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is whether the proposal would accord with the requirements for development permitted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

3. Changes of use permitted under the GPDO are subject to the limitations of Article 3(4) which states 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order'. Changes of use from agricultural buildings to dwellinghouses may not therefore be permitted development where use restrictions are in force within existing conditions.

4. The appeal building was granted planning permission[1] in 2009 subject to condition No 2 which requires 'The building hereby approved, shall be used only for agricultural purposes. On its becoming redundant for such purposes, it shall be demolished and all materials resulting from the demolition shall be removed from the site, within 3 years of the date this occurs'. The reason stated for the condition is 'To safeguard the rural character of the area'.

5. In appeal submissions the appellant has sought to challenge the validity of condition No 2, however, the merits of the original condition are not before me for consideration. Only compliance with the requirements of the GPDO is under consideration in a prior approval application. It remains open to the appellant

[1] Planning application Ref: 09/01028/FULL

to apply to the Council for a determination under section 73 of the Act, nonetheless.

6. Although condition No 2 has the effect of limiting the use of the building for only agricultural purposes it does not expressly seek to restrict the use of national permitted development rights. In this regard I am mindful that the Planning Practice Guidance (PPG) at paragraph ID: 21a-017 advises that conditions restricting the future use of permitted development rights need to be precisely defined, by reference to the relevant provisions of the GPDO. However, the condition was imposed in 2009 and long before permitted changes of use from agricultural buildings to dwellinghouses was inserted into the GPDO in 2013. The Council could not reasonably have foreseen the need for such an expressly worded restriction.

7. Moreover, the reasons given within the original permission for granting approval and the imposition of condition No 2 are stated with reference to the agricultural need for the building and compliance with the policies of the development plan. The policies referred to included Policy COR18 of the Mid Devon Core Strategy 2007 which identified agricultural buildings as an appropriate form of development in the open countryside. The Council's intentions were evidently to retain the building in agricultural use and not to allow it to fall into alternative uses, including those that may not have been permitted in the open countryside under prevailing policies.

8. Whilst not expressed in the terms now required under the PPG, I find the wording of condition No 2 clearly amounts to more than a statement describing the use approved. It goes further, and places a restriction on alternative uses to the point of requiring the removal of the building when no longer needed for its intended purpose. I am satisfied that, by implication, any alternative uses of the building prevented by condition No 2 includes those uses which may otherwise be permitted development.

9. For these reasons I find that the proposal would be contrary to condition No 2 of the original planning permission. Therefore, and notwithstanding whether any other requirements of the GPDO are fulfilled, the proposal conflicts with Article 3(4) and so would not accord with the requirements for development permitted under Schedule 2, Part 3, Class Q of the GPDO.

10. In reaching my determination I have had regard to the findings of other Inspectors in the extracts of appeal decisions[2] submitted and with which I broadly concur. I have also had regard to an earlier decision[3] provided to me as an example of precedent. However, the merits of the proposed use are not before me for consideration and I have determined the appeal against the requirements of the GPDO.

Conclusion

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

David Walker

INSPECTOR

[2] Appeals Ref: APP/U1240/A/14/2225668, APP/X1925/A/14/2223832, APP/Z3825/A/14/2223822, APP/X2410/W/15/3005520, APP/L3245/W/15/3097735, and APP/G5180/W/15/3032578
[3] Planning application Ref: 14/00635/PNCOU