

Appeal Decision

Site visit made on 16 August 2016

by R J Marshall LLB DipTP MRTPI

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

Decision date: 4 November 2016

Appeal Ref: APP/C3105/W/16/3149323

The Grain Silos, Godington Hall, Godington, Bicester, Oxfordshire, OX27 9AE

- 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 of a decision on an application for approval required under a development order.
 - The appeal is made by Mr J Kevill against Cherwell District Council.
 - The application Ref 15/01827/Q56, is dated 30 September 2015.
 - The development proposed is the conversion of 2 agricultural grain silos to 2 single-storey residential properties.
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Decision

1. The appeal is allowed as permission has been deemed to be granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the conversion of 2 agricultural grain silos to 2 single-storey residential properties at The Grain Silos, Godington Hall, Godington, Bicester, Oxfordshire, OX27 9AE in accordance with the details submitted pursuant to Schedule 2, Part 3, Class Q of the GPDO.
2. In arriving at this decision the appellant should note that the GPDO requires at Q.2. (3) that development permitted under Class Q is permitted subject to the condition that development under Class Q(a) and Class Q(b) must be completed within a period of 3 years starting with the prior approval date.

Background and procedural matters

3. Under the GPDO development consisting of: a) a change of use of a building and any land within its curtilage from the use as an agricultural building to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order; and b) building operations reasonably necessary to convert the building referred to in paragraph (a) to use falling within Class C3 of that Schedule is, subject to provisos and conditions, permitted development.
 4. Although not expressly stated it is clear from information on the application and appeal that this application is for approval under the Development Order for both the change of use and associated operational development. The application was required because the permitted development right is conditional on the developer applying to the local planning authority for a determination as to whether its prior approval will be required in relation to potential impacts and risks set out in the Order.
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5. Subject to the proposal being permitted development the Council has no objection to the scheme. This is because it is satisfied that the requirements under Class Q.2 of the GPDO, concerning specified impacts of the development, would be met. The Council is, however, of the view that the proposal is not permitted development, and on this ground sought to refuse prior approval.
6. Prior approval applications of this kind must be made within 56 days of the date of the receipt of the proposal and supporting information. The Council concedes that it did not meet this deadline. On the expiry of this period permission was deemed to have been granted. However, to conclude that the appeal should be allowed I must be satisfied that the proposal is permitted development. I address this below.

Main Issue

7. In light of the above, the main issue is whether the proposal is permitted development under the terms of Schedule 2, Part 3, Class Q of the GPDO (2015).

Reasons

8. The Council says it is not permitted development because of the size of the curtilages shown by the appellant. To be permitted development under Class Q(a) the proposal must be development consisting of a change of use of the building and any land within its curtilage from use as an agricultural building to a use falling within Class C3. Curtilage is defined as *(ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building....*
9. The appellant has marked on plan the curtilage in red. The Council's first contention was that the appellant had excluded from the red line area a piece of land between the 2 silos in this application and 2 closely adjoining silos to the north. It says that, for practical reasons, it is highly likely and desirable that this land would become the curtilage of the 2 buildings. Thus, says the Council, it should have been included as such. This would make the curtilage larger than the area occupied by the agricultural buildings and the proposal would not be permitted development.
10. However, there is no requirement on an applicant to request any change of use for the curtilage. As the GPDO does not require an application for prior approval to show a curtilage beyond the confines of the buildings there can be no requirement for an applicant to include one or, indeed, add to what has been shown.
11. The Council subsequently argued that, in any event, the curtilage shown on the plans is likely to exceed the external footprint of the appeal buildings. This is on the grounds that the curtilage measures 107.3 sq m and the buildings 105.6 sq m. However, the Council has provided no workings for this view. And, based it would seem on 1:500 scale plans, it is unlikely that its figures could have the degree of precision referred to. To all intents and purposes it is correct to consider the proposed curtilage as being so close in size to the area occupied by the buildings that the aforementioned requirement of the GPDO is met.
12. The Council also contended, in its Delegated report, that there was a failure to provide evidence to show compliance with criteria a, b, c, d, e, f and h of Class Q.1 of the GPDO. Without such compliance the proposal would not be

permitted development. These criteria seek to prevent such a change to C3 use on an established agricultural unit when: the site and building has not been used solely for agricultural use at specified times; it would give rise to the cumulative floor space of the existing building(s) changing to Class C3 use under Class Q exceeding 450 sq m.; the cumulative number of separate dwellinghouses developed under class Q would exceed 3; landlord and tenant consent has not been obtained when the site is occupied by an agricultural tenancy; specified matters relating to the termination of tenancies has not been complied with; specified agricultural development under the provisions of the GPDO have been carried out on the agricultural unit since 21st March 2013; and the proposal, together with any previous development under Class Q would result in building(s) in C3 use of more than 450 sq.m.

13. However, both parties refer to a later application for prior approval under the GPDO to C3 use on which substantially more information was received. Contrary evidence has been provided by the parties on whether this latest application relates to the 2 appeal silos or 2 silos directly to the north. However, this has no material bearing on my decision for the reasons given below.
14. All 4 silos are clearly in the same agricultural unit. The Council granted prior approval to the latest application saying, amongst other things, that from its own research there was compliance with those subparagraphs of Class Q1 which previously caused concern. So closely sited are the 4 grain silos, and so small are they, that it seems to me that the Council's findings above on compliance with the subparagraphs of Class Q.1 have equal validity in the proposal before me. I have been given no evidence to the contrary.
15. Although granting prior approval, however, the Council added a caveat that as its decision had not been made with the benefit of a plan of the holding its determination on this case cannot be regarded as definitive. And that should further information come to light casting doubt on what has been supplied the proposal may not constitute permitted development.
16. However, a plan of the farm boundary has been submitted with the appellant's appeal statement. The Council has not suggested that in light of this plan, and indeed on other information submitted with the appeal, that doubt is thrown on the correctness of its earlier decision. Nothing that I saw suggests otherwise and, on this basis, it is reasonable to conclude that the proposal before me is permitted development.
17. I conclude on the main issue that the proposal is permitted development under the terms of Schedule 2, Part 3, Class Q of the GPDO (2015).

Conclusion

18. Given above I conclude that the appeal should be allowed.

R J Marshall

INSPECTOR