

Appeal Decision

Site visit made on 1 November 2016

by Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/L3245/W/16/3156701

Ruckley Oak Barn, Ruckley, Shrewsbury, Shropshire SY5 7HR

- 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 Lucy Pulford against the decision of Shropshire Council.
 - The application Ref 16/02091/PMBPA, dated 12 May 2016, was refused by notice dated 8 July 2016.
 - The development proposed is for the change of use of agricultural building to a dwellinghouse.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Lucy Pulford against Shropshire Council. This application is the subject of a separate Decision.

Procedural matters

3. I have defined the description of development in the banner heading as the change of use of agricultural building to a dwellinghouse, which is taken from the appellant's Planning Statement and which accurately portrays what is proposed in terms of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
4. The appellant has submitted a number of other appeal decisions in support of this appeal. However, the full details of these appeals are not before me so I am unable to determine the full relevance of these to the appeal before me although acknowledge the principles that were established in each case. Accordingly I have determined this appeal on this basis together with the information before me.

Main Issues

5. The first main issue in this appeal is whether the proposed development would constitute permitted development in respect of Class Q of the GPDO 2015 subject to the prior approval of certain matters. If it is concluded that the proposal would be permitted development, further main issues involving whether, in the context of protected species and the effect on the setting of the nearby listed building, the building should be converted to a dwellinghouse.
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Reasons

Whether the proposal would be permitted development

6. The appeal building comprises a small oak timber framed barn sitting on a low stone plinth and clad with small clay tiles behind, and in an elevated position to the north-west of a listed building of the name of Duffy's Cottage that fronts the road. Ruckley itself consists of a small group of houses and agricultural buildings clustered along the roadside. The building was allowed following an appeal¹ against a refusal by the predecessor local planning authority for the erection of a replacement barn for the storage of domestic and agricultural items and garage. Despite the passage of time, only the superstructure has been completed. At the time of my site visit, the external walls had been boarded but the final oak boards were still stacked in the building along with some hay bails, a small tractor and a few agricultural implements.
7. The provisions of the GPDO Class Q states that the change of use of an agricultural building to a Class C3 use is permitted as long as it complies with a number of criteria including that it was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 (Q.1(a)(i)). The Council states that prior approval is refused in this case because the building has not been used solely for agricultural use on the basis of what was stated at the time of the original planning permission and reiterated again at the time of a later planning application for conversion to a dwelling that was refused by the local planning authority. Moreover, the Council claims that the building is within an area of woodland and pasture amounting to just 0.4Ha with the appellant allowing a farmer use of the building as part of his enterprise. The farmer's main enterprise is some 13 miles away. There does not appear to have been a business transaction in the financial sense between the owner and the farmer.
8. I am satisfied with the appellant's evidence that the building is now and at the relevant date, used solely for agriculture albeit on a very modest scale. This is despite the original intentions for the building in 2001. The Council has not presented persuasive contrary evidence to demonstrate that the buildings were not in active agricultural use at the relevant date. Moreover, there is nothing in Class Q that would require the agricultural unit to be farmed or operated by the owner or, for that matter, intensively. The transactional arrangement between the owner and farmer would also be immaterial. Various documents have been submitted including agricultural holding numbers, which although are inconclusive to the main issue, nevertheless add weight to the evidence submitted overall. The proposal would be compliant with the other criteria set out in Class Q.1.
9. Following this initial assessment, the provisions of the GPDO require the Local Planning Authority to assess the proposed development solely on the basis of its impact in terms of transport and highways, noise, contamination and flooding impacts/risks, and also whether the location or siting of the building concerned make it otherwise impractical or undesirable to change the use – taking into account any representations received.
10. The roadway to the site would be able to accommodate the additional dwellinghouse, which would also not give rise to any issues of noise or

¹ APP/B3220/A/01/1056323

contamination risks that would cause harm; moreover the site is not located within an area of known flood risk. There are no objections to the proposal on grounds of highways, noise, or flood risks from statutory consultees and I would concur with those views. The Council draws attention to the advice contained within the Planning Practice Guidance as to whether the location or siting would make it otherwise impractical or undesirable for the building to change to Class C3 and I am satisfied that there is nothing in this proposal that would be of concern in this regard in the conventional sense in the examples given in the Planning Practice Guidance. However these examples are not finite and a degree of judgment is necessary and I therefore return to Q.2(e) below.

Protected Species

11. The second reason for refusal claims that inadequate ecological surveys were provided sufficient to properly assess the likely full impact of the proposal on protected species, which have the possibility of being affected by the proposal. No additional surveys other than those accompanying the Prior Approval application have been provided with the appeal documentation.
12. In this regard the appellant has brought to my attention an appeal decision² that is claimed to be of similar construct. However, the appellant in the current appeal produced an ecological report at the time of submission to the Council that identified the presence of bats in the barn with advice that a further survey be undertaken during the summer period to determine the likely impacts on bats that are present together with the identification of possible further mitigation measures for their protection if deemed necessary.
13. I acknowledge that although protected species are not specifically referred to in the GPDO, Regulation 9 of The Conservation of Habitats and Species Regulations 2010 would still apply. This states that the "competent authority must exercise their functions which are relevant to nature conservation...so as to secure compliance with the requirements of the Directives". This means that competent authorities, including Inspectors at appeal situations must have regard to the Directives in making decisions in relation to planning functions. This is consistent with the findings of the Inspector in the appeal³ highlighted by the Council.
14. Having regard to the appellant's own preliminary bat survey findings, as well as the Council's expressed concerns about protected species and my own observations on site, there is a reasonable prospect that protected species are present at the site and may be affected by the development proposed. This position is supported by the Council's Ecologist, whose professional opinion I afford significant weight. The appellant's submissions has increased the level of uncertainty and without further evidence, I cannot be satisfied that the Regulations would not be breached or that any of the works that would be necessary either in the building works themselves or in the mitigation measures would be licenced.
15. Given the strict protection afforded to bat habitats and the need for further studies, I am not satisfied that there would not be a material adverse effect on

² APP/V3310/W/15/3004913

³ APP/L3245/W/15/3004467

protected species. Condition Q.2(e) of GPDO Class Q has not therefore been met and prior approval in relation to this condition is not given.

The Listed Building Setting

16. Duffy's Cottage dating to the eighteenth century is a prominent roadside building despite its low height and modest form. Its significance is derived from its simple cottage style of roughly coursed grey sandstone and brick dressings and segmental brick heads over casement windows and chimneys. Its setting and the way it is experienced relies upon the relationship with other historic roadside buildings in this rural hamlet. The appeal building in its current form is set well back within a wooded area above the listed building and its appearance is that of a modest traditional timber framed barn.
17. When viewed from the road, the barn is well screened by the established hedgerows and mature trees that surround the site. It does not form a dominant feature in the landscape and is not clearly seen within the context of the listed cottage. I agree with the Inspector in the 2001 appeal that the difference in ground levels and the intervening mature planting creates sufficient visual separation to ensure that the barn would have no significant effect on the setting of "Duffys". This is despite the 'domestication' that would inevitably occur with converting the building to a dwellinghouse.
18. Having regard to my statutory duty, I am satisfied that the setting of the listed building would not be harmed by the proposed conversion of the existing agricultural building to a dwellinghouse. This was also the view of both the predecessor local planning authority and another Inspector at an appeal involving the building in 2004⁴. In this regard I consider that the heritage aims of the National Planning Policy Framework would be satisfied.

Conclusions

19. Although I have found in favour of the appellant in relation to the expressed concerns of the Council on the previous level of agricultural use of the appeal building as well as the effects on the setting of the listed building, this does not alter my conclusion on protected species and that the proposal would not meet Q.2(e) of the GPDO.
20. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Gareth W Thomas

INSPECTOR

⁴ APP/B3220/A/04/1141284