The Planning Inspectorate

Appeal Decision

Site visit made on 12 December 2016

by D E Morden MRTPI

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

Decision date: 20 December 2016

Appeal Ref: APP/M1520/X/16/3150073
Oak Tree Farm, Sherwood Crescent, Benfleet, Essex, SS7 2LF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr J Armitage against the decision of Castle Point Borough Council.
- The application Ref 15/0676/CLP, dated 17 August 2015, was refused by notice dated 27 November 2015.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the change of use of three agricultural buildings to residential use to form three dwellings.

Decision: The appeal is dismissed.

Preliminary Matters

1. The application was submitted for the change of use of three separate buildings but between submitting the appeal and the date of the site visit two of them have been approved by the Council leaving only the single storey stable block nearest to the appellant's bungalow for me to consider and make a decision on.

2. At the time of the first application (for prior approval), which the appellant argued was not determined within the requisite 56 day period, whether or not such changes of use constituted 'permitted development' relied upon compliance with the provisos set out in Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) as amended by a later Order (the (Amendment and Consequential Provisions)(England) Order 2014). That has now been superseded and such changes come under Class Q of the 2015 Amendment Order. At the time of the later LDC application (rather than the initial prior approval application), Class Q of the 2015 GPDO Amendment Order was the appropriate statutory instrument against which to consider the proposal.

Reasoning

3. There were two main arguments raised. Firstly, that the application for agricultural prior approval submitted in 2014 claiming pd under Class MB of the 2014 GPDO amendment had not been determined within the requisite 56 days and there was therefore, a deemed permission to undertake the works. Secondly, contrary to the Council's reason for refusal of the LDC, the building was in agricultural use on 20 March 2013 and the proposal was pd under Class Q of the 2015 GPDO amendment (the relevant statutory instrument in 2015).

4. Dealing with the deemed permission point first, whilst the first application was submitted and the fee paid so far as the appellant is concerned, the Council state categorically that it was never received. The appellant does not say whether he ever received any notification that it had been received which he would have done once it had been registered. He has not challenged the Council's stance on this and indeed he subsequently submitted another application to the Council (dated as registered on 6 October 2015). Nothing has been put forward in the representations to throw doubt on the Council's stance that the application was not received and in those circumstances, that is not a ground of appeal that can be substantiated by the appellant.

5. Turning to the second point (and the reason for refusing the application for the LDC) - the use of the building on 20 March 2013, the Council claimed it was not in agricultural use, having been approved as a stable, tack room, tractor shed and store and could not, therefore, benefit from the permitted development rights set out in Class Q. The building was partly agricultural in that the permission included use of part of it as a tractor shed (indeed there was one parked inside at my visit) and there is no information from either side as to what the store room element of the building was in connection with.

6. As stated by the appellant, the fact that the building was approved for the four activities set out in the decision does not necessarily mean it was used for all or indeed any of those purposes; it is what it was used for that is relevant. The Council is also possibly incorrect to say that permission would have been needed to use it for agricultural purposes and that the appellant could have been liable to enforcement action for doing so. The use of land for agriculture is not development nor is the use for that purpose of any building occupied together with land so used.

7. The onus of proof of the lawfulness of any development in an LDC application or appeal lies with the appellant and there are eleven different provisos in Class Q of the GPDO which, if not satisfied means that the pd right does not apply. There appears to be no dispute about provisos (b) – size limit on buildings being converted, (c) the cumulative number of dwellings being provided not exceeding three, (h) the cumulative floor space for the three buildings being converted does not exceed the size limit, (j) the site is not on Article 2(3) land, (k) the site is not one of the three types of sites listed, (l) the site does not contain an ancient monument and (m) the building is not a listed building.

8. Proviso (a) is concerned with whether or not the building was used for agricultural purposes on 20 March 2013. The only evidence in the representations was a statutory declaration signed by the appellant stating that the building had only ever been used for agricultural purposes – as a storage facility, tractor shed and workshop in connection with his agricultural holding. In the absence of any evidence from the Council or anyone else to the contrary, I consider that is sufficient to conclude that the building was in agricultural use on 20 March 2013 so that reason for refusal cannot, in my view, be substantiated.

9. There is, however, some important information missing that should have been provided if a decision is to be made in favour of the appellant. In short there is no information to confirm whether or not provisos (d), (e), (f), (g) and (i) are satisfied. Provisos (g) and (i) concern the detail of the works to be undertaken, (g) stating the development is not pd if it would result in the

external dimensions of the building extending beyond the external dimensions of the existing building at any given point and (i) details the works to be undertaken (new windows, doors, roofs or exterior walls etc. services to be provided, and partial demolition that might be needed) to facilitate the conversion. None of these details are included in the application or the appeal papers.

10. Provisos (d), (e) and (f) are all concerned in some way with the agricultural status of the site where the change of use is proposed. The site needs to be on agricultural land comprised within an agricultural unit but no evidence has been provided. The only drawings submitted with the appeal show the location of the three buildings and also a red line delineating vehicular access to them off an entrance in Poors Lane. Other land within the appellant's ownership is shown edged in blue and that includes Oak Tree Farm bungalow which fronts Sherwood Crescent and a small well treed area around the three buildings in total amounting to about two hectares in area.

11. The statement submitted with the original application states that the site forms part of an agricultural unit of some 12.14 hectares (30 acres) which has been owned by the applicant for a number of years and is currently used primarily for the production of hay. No other land adjoining the application site or blue land is shown as owned by the appellant. No evidence of any registration as an agricultural unit has been submitted. If the statement is correct then proviso (d) would appear to be satisfied (the land is not an agricultural tenancy in which case the owners express consent is required before the pd right can be exercised).

12. Proviso (e) is also about agricultural tenancy and refers to it being terminated. That also would appear to be satisfied but there is no documentary evidence (which is easily obtained) to support the statements set out in the papers submitted with the application. Proviso (f) concerns other development on the agricultural holding and the Council's report on the LDC application confirms that it was not aware of any other developments on the site under Class A(a) or B(a) since 20 March 2013. However, 'the site' is not clarified in any way and I have no information about whether 'the site' was regarded as the land edged in blue or some other 'site'.

Conclusion

13. In all these circumstances, I conclude that the appellant has not satisfied the burden of proof that is clearly set out in the Planning Act such that I could allow this appeal which I shall accordingly dismiss. Whilst I do not agree that the detail of the Council's decision was well founded, as is evident from paragraph 8 above, it is still incumbent upon me to consider whether or not a LDC should be granted or not for whatever reason.

D E Morden

INSPECTOR