
Appeal Decision

Site visit made on 9 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 6 January 2017

Appeal Ref: APP/B2355/X/16/3152047

Myrtle Earth Farm, Edge Lane, Cloughfold, Rossendale BB4 7SS

- The appeal is made by Tim Gregson under section 195 of the Town and Country Planning Act 1990 against a refusal by Rossendale Borough Council to grant a lawful development certificate.
 - The application Ref: 2016/0139, dated 5 April 2016, was refused by notice dated 6 June 2016.
 - The application was made under section 192(1)(a).
 - The development for which the certificate is sought is "Change of use from an agricultural building to a dwelling".
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Decision

1. The appeal is dismissed.

Reasons for the decision

Background and procedural matters

2. The background to this appeal is that the appellant submitted application 2015/0446 to the Council, pursuant to Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, for prior approval in connection with a proposal to change the use of the building to a dwelling. The Council decided to refuse the application on the ground that insufficient information had been provided but, as the Council have acknowledged, the notice of refusal was not issued until after the expiry of the 56-day period referred to in paragraph W.(11)(c) of Part 3.
 3. The appellant maintains that, as a result, the proposed change of use can lawfully be instituted. His application to the Council for a lawful development certificate to that effect was, however, refused on the ground that the Council dispute that the building is used or was last used for solely agricultural purposes.
 4. The appeal is made under section 195 against the Council's refusal of the application for the lawful development certificate. Section 195 requires an assessment to be made as to whether the refusal is or is not well-founded. The assessment is based on whether or not the proposed change of use would be lawful if begun at the time of the application for the certificate. The planning
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merits of the proposed change of use are not relevant to the appeal and there is no planning application or prior approval application before me.

5. The Council's failure to meet the 56-day deadline is not determinative of the outcome of this appeal on its own, since (i) the starting point is that the proposed change of use must be within the terms of paragraphs Q.(a) and Q.1(a) in the first place and (ii) the process in paragraph W.(2) must have been complied with for there to be an application to which the 56-day period referred to in paragraph W.(11)(c) applies at all.

Is the proposed change of use within the terms of paragraphs Q.(a) and Q.1(a)?

- The building must have been in use as an agricultural building at the time the application for prior approval was being considered. (Paragraph Q.(a))
 - The site must have been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or, if the building was in use before that date but was not in use on that date, when it was last in use. (Paragraph Q.1(a))
 - An "agricultural building" is a building used for agriculture and which is so used for the purposes of a trade or business. An "agricultural use" refers to such uses. An "established agricultural unit" means agricultural land occupied as a unit for the purposes of agriculture. The "site" is the building and the land within its curtilage. (Paragraph X)
6. The prior approval application was submitted in October 2015. The application form and the statement and statutory declaration accompanying it do not indicate what the building was in use for at the time of the application, apart from describing it as an "agricultural building".
 7. Council officers had visited the building in February 2015 and found it to be in use as stables and for storage. A Planning Inspector had visited the building in August 2015 in connection with another appeal made by the appellant and had noted that the larger section contained stables, which were vacant, and that the smaller section was used for general storage. He also recorded that the site was no longer a working farm.
 8. The Council provided this information to the appellant during the current appeal. It called for a thorough explanation from him, but his response was merely to assert that the building is an agricultural building and not a stable and that it is the only building on the farm, for which he has an agricultural holding certificate.
 9. Nothing in any of the material supplied by the appellant demonstrates that this is a building that was used for the purposes of an agricultural trade or business at the time of the application for prior approval. The Rural Payments Agency notification of a new holding number, which the appellant has provided, is now nearly twelve years old. More recent information has not been supplied, other than the Inspector's recording that the site was no longer a working farm.
 10. On the information available to me, I have formed the opinion, on the balance of probabilities, that at the time of the application for prior approval (a) the building was either not in use as an agricultural building at all or was in a mixed use for agriculture and for other purposes and (b) the building was not

in use for the purposes of an agricultural trade or business. Class Q.(a) permitted development rights do not apply to buildings in mixed use or to buildings used for agriculture but not so used for the purposes of a trade or business.

11. The appellant's statutory declaration is intended to deal with paragraph Q.1(a) matters. It states:

"The last use of the detached building adjoining the farmhouse and prior to the 20th of March, 2013 was for its exclusive use for agricultural purposes in association with the 55 acre agricultural unit adjoining it.

The aforementioned agricultural land was used for the grazing of cattle and the building was used for the storage of hay and for the storage of agricultural equipment."

12. The statutory declaration is very brief. It does not give, for example, any details of the association between the use of the building and the use of the land for the grazing of cattle nor does it explain for what purposes hay and agricultural equipment were stored in the building. The information is insufficient to establish whether the proposed change of use complies with paragraph Q.1(a).

Has the process in paragraph W.(2) been complied with?

- Paragraph W.(2)(a) states that the application for prior approval must be accompanied by a written description of the proposed development, which must include any building or other operations. This requirement applies to all development proposed under Class Q, including changes of use. The phrase "any building or other operations" is not defined in Part 3. For the purposes of the 1990 Act, "building operations" includes demolition, rebuilding, structural alterations of or addition to buildings, and other operations normally undertaken by a person carrying on business as a builder.
 - Paragraph W.(2)(b) states that the application for prior approval must be accompanied by a plan indicating the site and showing the proposed development.
13. The application form for prior approval contains three boxes relevant to these matters. The first requests a description of the "proposed development, including relevant information on the siting and location of the building". In this box the appellant put "Change of use of an agricultural building to 1 dwelling". The second box requests "a description of any exterior alterations which are proposed to the building including information of any intended partial demolition reasonably necessary to carry out these works, work involving the installation or replacement of windows, doors, roofs, exterior walls and work involving the installation or replacement of water, drainage, electricity, gas or other services". In this box, the appellant put "No extensions or demolitions are proposed. Application is for Class 3, Part Q(a) only". The third is the box in the checklist, which requires "A plan indicating the site and showing the proposed development". The appellant checked this box, but only submitted a location plan and a proposed site plan, both of which simply showed the position of the building and its curtilage outlined in red.

14. The statement accompanying the application more accurately describes the proposal as the "conversion" of the building to a dwelling. It is obvious, given the condition of the building, that before the proposed change of use can take place substantial conversion works will have to be carried out to make the building fit for human habitation and to comply with the Building Regulations. Externally, these works will involve at the very least the rebuilding of the collapsed wall that has been replaced by boarding.
15. In the circumstances I have described, I consider that paragraph W.(2)(a) was not complied with, since the application was not accompanied by the required description of the proposed development, and paragraph W.(2)(b) was not complied with, since the application was not accompanied by a plan showing the proposed development.

Conclusion

16. My conclusions on the two issues raised in paragraph 5 above are (i) that the proposed change of use is not within the terms of paragraph Q.(a) and would therefore not be permitted development and (ii) that, since the process in paragraph W.(2) was not complied with, there was no application to which the 56-day period referred to in paragraph W.(11)(c) applied. I am satisfied that the Council's refusal of the application for the lawful development certificate is well-founded, since the proposed change of use would not be lawful if begun at the time of the application for the certificate. The appeal has therefore been dismissed, as required by section 195(3).

D.A.Hainsworth

INSPECTOR