
Appeal Decision

Site visit made on 8 November 2016

by Rory Cridland LLB (Hons)

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

Decision date: 6 January 2017

Appeal Ref: APP/D0840/W/16/3154883

Barn at Firste Park, Windsor Lane, Kelly Bray, Callington, Cornwall, PL17 8HD

- 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 Mr Ian Kane against the decision of Cornwall Council.
 - The application Ref PA16/03782, dated 23 March 2016, was refused by notice dated 14 June 2016.
 - The development proposed is described as "prior approval for the change of use of an agricultural building to 2 No. residential dwellings".
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 1 December 2016.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Council against the appellant. A further application was made by the appellant against the Council. These applications are the subject of separate Decisions.

Main Issues

3. The main issues are whether the proposal complies with the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") with particular regard to its use and structural integrity.

Reasons

4. Paragraph Q.1 of the Order permits the change of use of an agricultural building and any land within its curtilage to a residential dwelling, together with building operations reasonably necessary to convert it, subject to a number of restrictions. These include where the site¹ was not used *solely for an agricultural use* as part of an established agricultural unit on 20 March 2013² ("the Relevant Date") and where it would involve building operations other than

¹ ie. the building and any land within its curtilage

² Paragraph Q.1(a)(i)

those specified in the Order³. Furthermore, in order to satisfy the relevant criteria under Class Q, the applicant must provide sufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions⁴.

5. The appeal property consists of a wooden agricultural building located adjacent to the property known as Firste Park. It is clear from its appearance that it would previously have been used for an agricultural purpose and I understand that it was originally constructed as a battery chicken shed. However, I have been provided with no information as to when that use ceased and there is a lack of information regarding its actual use at the Relevant Date.
6. Similarly, in terms of its present use, although the appellant argues that the building has continued to form an integral part of an established agricultural unit, there is little information as to the role the building has played in the enterprise. Furthermore, the appellant accepts that, subsequent to its use as a battery chicken shed, the building has been used as an office for the management of the wider holding. The Order defines the term 'agricultural use' as a building used for agriculture and which is so used for the purposes of a trade or business. The subsequent use described above does not, in my view, fall within this definition. While I note the appellant's argument that the Order requires a material change of use to have taken place from an agricultural one to a non-agricultural one in order to be excluded from Class Q, I do not consider the Order imposes any such requirement. Instead, I consider the word *use* refers to its actual use.
7. On balance, I do not consider that the appellant has provided sufficient evidence to enable me to establish with any certainty that the building complies with the requirements of Class Q of the Order, either in relation to its use on the Relevant Date or more recently. I cannot therefore be certain that the building is not excluded under Class Q.
8. The Council has also raised concerns regarding the lack of information on the building's structural integrity and, in particular, whether the foundations are suitably robust. Planning Practice Guidance makes clear that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.
9. The proposal includes a list of works all of which fall within the ambit of Class Q. Furthermore, as part of this appeal the appellant has submitted a structural survey which advises that the building sits upon and is integrated with an existing concrete foundation pad. This is described as being in good condition, showing average wear and tear and the survey advises that it is suitable for retention to provide foundation and flooring for the proposed development. However, this assessment is based solely on a visual inspection, with no trial pits or sample data being provided which would indicate either its quality or condition. Foundations will differ significantly between buildings and there is no robust evidence which would

³ Paragraph Q.1(i)

⁴ Paragraph W(3) of the Order

demonstrate that the foundations of this particular building are of a suitable type and condition for the development proposed. Without further information, I cannot be satisfied that the foundations in place are suitable or that the extent of the works reasonably necessary for the building to function as a dwelling house would not exceed those permitted by the Order. Accordingly, I cannot be satisfied that the proposal is not excluded under Paragraph Q.1(i) of the Order.

10. The Council has also raised objections regarding the extent of the curtilage proposed and its practical arrangement. However, Class Q permitted development rights do not require the inclusion of any curtilage nor, if one is included, for its arrangement be particularly practical. Instead, Class Q grants permission for a change of use of a building *and land within its curtilage* subject to the limits set out in Paragraph X. If a proposal seeks to employ land outside those defined limits, it fails to accord with the requirements of Class Q.
11. In this instance, the plans submitted with the application show a red line around the building itself and an area of land to the front, which appears to be smaller than the building's footprint. In the absence of anything to indicate that a smaller area would have served the purposes of the agricultural building, I consider the area proposed to fall within the limits imposed by Paragraph X. The Council has, as part of its appeal, sought to suggest that the impractical nature of curtilage arrangements would make it otherwise impractical or undesirable for the building to change from agricultural to residential use. However, Paragraph Q.1(e) is concerned with the siting of the building or its location and this does not in my view relate to the extent or practicality of the curtilage proposed.
12. Consequently, although I do not consider the proposal would fail to accord with the limits imposed on its curtilage by Paragraph X of the Order, I nevertheless find that insufficient information has been provided to enable me to establish with any certainty whether the proposed development complies with the restrictions imposed by Paragraphs Q.1(a) and Paragraphs Q.1(i).

Conclusion

13. For the reasons set out above, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR