

Appeal Decision

Site visit made on 21 January 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 6th March 2017

Appeal Ref: APP/D2320/W/16/3160406

Orcheton House Farm, Wood Lane, Heskin, Chorley, PR7 5PA

- 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 Richard Prideaux against the decision of Chorley Borough Council.
 - The application Ref 16/00522/P3PAO, dated 31 May 2016, was refused by notice dated 27 July 2016.
 - The development proposed is described as "prior approval application under Part 3, Class Q (a and b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 for proposed change of use of agricultural building to 2 no dwelling houses and associated operations".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. No description of development is provided on the planning application form. The description given above is therefore taken from the appeal form and the Council's decision notice.
3. Schedule 2, Part 3, paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('2015 GDPO') sets out the prior approval process. It states at paragraph W.(3) that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.

Application for costs

4. An application for costs was made by Mr Richard Prideaux against Chorley Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, with particular regard to:
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- (a) Whether the appeal building was solely used for an agricultural use on 20th March 2013, and;
- (b) Whether the extent of the proposed structural works to the building go beyond those permitted under Class Q.

Reasons

Use at 20th March 2013

- 6. Class Q permits development consisting of a change of use of a building, and any land within its curtilage, from use as an agricultural building to a use falling within Class C3 (dwellinghouses). Paragraph Q.1. further states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013.
- 7. The appellant has provided two sworn affidavits to corroborate that the building was solely in agricultural use on 20th March 2013. Both affidavits state that the building was used to accommodate fish tanks for breeding purposes, and for the storage of agricultural equipment and machinery. At the time of my site visit, the fish tanks were no longer in the building.
- 8. There is a fishing lake close to the appeal building that is in the appellant's ownership. The submitted Cefas certificate also indicates that the fish tanks were used to rear popular angling species, such as barbel, tench and carp. The appellant has not sought to argue that the fish reared in the building were sold for food consumption.
- 9. The parties dispute whether the rearing of fish for recreational angling would constitute an agricultural use. In this regard, the GDPO does not provide a definition of 'agriculture'. The parent Act in this case is the Town and Country Planning Act (1990), which provides a definition of agriculture at section 336(1). This states that agriculture includes "*the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land)*". Whilst the overall definition of agriculture is not exhaustive, this definition of livestock (which would include fish) clearly does not include creatures reared for sport or recreational purposes. In this regard, a parallel can be drawn to the rearing of horses for equine purposes, which is also not an agricultural use.
- 10. Whilst the building was erected under agricultural permitted development rights, and may have been previously used for agriculture, paragraph Q.1.(a) requires that the building was used solely for an agricultural use on 20th March 2013. The evidence does not support that in this case.
- 11. An officer report relating to a previous application on the same site has been drawn to my attention. This states that "*the fish rearing business, even though the fish may not be raised for consumption, would class as an 'agricultural activity'*". However, I have come to my own view on this matter based on the evidence before me.
- 12. I conclude that there is not sufficient evidence to demonstrate that the building was solely used for an agricultural use on 20th March 2013. The proposed change of use would therefore not meet the requirements of the 2015 GPDO for it to be considered as permitted development under the provisions of Class Q of Schedule 2 Part 3 of the Order.

Structure of the Existing Building

13. Class Q (b) permits building operations reasonably necessary to convert the building to a dwellinghouse. However, Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than: (i) the installation or replacement of — (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building.
14. The Planning Practice Guidance (PPG) provides further clarification in this regard. It states 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 (paragraph ID 13-105-20150305).
15. The appeal relates to a steel framed, metal clad building with blockwork at low level. The conversion would involve constructing a timber framed and blockwork structure within the existing building. Interested parties submit that the extent of works proposed goes beyond what could be considered as reasonably necessary under Class Q (b).
16. In this case, a structural report and addendum have been provided by the appellant. These conclude that the building structure satisfies all of the relevant design code criteria for structural adequacy, and that the existing floor slab has adequate strength to accommodate the proposal. The internal works that are proposed would not materially affect the building's appearance, or amount to the creation of a new building. Accordingly, in my view, the internal works do not need to be covered by Class Q as they would not constitute development.
17. Whilst interested parties submit that new foundation works would be required, this contention is not based on any structural survey. In this case, no additional foundation works are proposed, and the appellant's structural report states that none are required. The appellant further states that the current building is constructed on a larger footprint than the previous chicken shed, and its foundations were introduced beyond the existing slab. I saw evidence of this on my site visit.
18. For the above reasons, I conclude that the extent of the proposed structural works to the building do not go beyond those permitted under Class Q.

Other Matters

19. An interested party states that the map attached to Mr Prideaux's affidavit is incorrect regarding the ownership of the access track. However, the appellant states that they have a legal right of way in this regard. In any event, that matter does not have a bearing on the substance of the affidavit in my view.
20. The development of two dwellings would not lead to a material increase in traffic in the area. In this regard, I note that the Highway Authority did not object to development.

21. Whilst the site is located in Green Belt, this is not a relevant consideration under the provisions of Class Q.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR