The Planning Inspectorate

Appeal Decision

Site visit made on 10 May 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 21 June 2017

Appeal Ref: APP/X1118/W/16/3167709
Part of Moore Farm, Dean Cross, West Down, Ilfracombe, Devon EX34 8NT

- 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 Reuben Moore against the decision of North Devon District Council.
- The application Ref 61186, dated 6 May 2016, was refused by notice dated 22 August 2016.
- The development proposed is prior approval for change of use and associated operational development of agricultural building to 1 dwelling.

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) 2015, as amended (GPDO) (hereafter referred to as Class Q) for change of use and associated operational development of agricultural building to 1 dwelling at part of Moore Farm, Dean Cross, West Down, Ilfracombe, Devon EX34 8NT in accordance with the terms of the application Ref 61186, dated 6 May 2016 and the plans submitted with it.

Procedural Matters

2. The application was originally submitted on 6 May 2016 but was considered invalid by the Council in their letter dated 24 May 2016. This letter from the Council required further details and a further fee. Paragraph W(2) of Schedule 2, Part 3 of the GPDO sets out what must accompany an application and this includes the payment of a fee.

3. The application was then started on 3 June 2016. The Council used the description "Prior approval for change of use and associated operational development of agricultural buildings to 3 dwellings". The Council confirmed that this application should be determined within 56 days which would therefore be by 29 July 2016.

4. On 30 June 2016, the Council then wrote to the appellant stating that his original description as set out on the application form referred to "building number one" as proposed for a change of use to "dwelling house (class C3)" but in relation to the other 2 buildings the original description proposed "camping barns". The application in its original form therefore only proposed 1 dwelling as the intended use of the other 2 buildings would not have fallen

within the definition of a dwelling house (Class C3) as required by Class Q. I have used the Council's amended description as this accurately describes the development that could potentially constitute permitted development within this class. This was clarified with the appellant upon registering of the appeal.

Main Issues

5. The main issues are: whether the proposed development would meet the requirements for permitted development within Class Q; and if it would, then whether or not the Local Planning Authority failed to make a decision to approve or refuse prior approval within the statutory 56 days following the date on which the application was received by them.

Reasons

Whether permitted development

6. The 3rd reason for refusal relates to the structure of the building. This concerns whether or not building operations required would go beyond what is reasonably necessary for the building to function as a dwellinghouse (class Qb with the extent of "building operations" being clarified in Q1i).

7. The plans that have been submitted are of a very basic form but are sufficient to understand what is proposed for building 1. The Council's report and appeal statement confirm my understanding of those plans. The existing box-profile sheet roof is shown for retention as would the walls be with the addition of some cladding. A structural report has also been submitted which was not the case when a similar scheme was considered by my colleague in 2016 (Ref APP/X1118/W/15/3130551).

8. In this case, new windows and doors would be inserted within existing openings. The structural report states that new lintels and supports for the window and door apertures would be necessary. Some unspecified strengthening of the roof structure would be necessary if re-roofing is required but the plans show that re-roofing is not proposed. Undoubtedly some works of maintenance are required such as the replacement of damaged rainwater goods, water-proofing and "tying-in".

9. Although these works are not specified in great detail, the structural report has been prepared by a chartered surveyor and is not challenged by another chartered surveyor. I give it significant weight. The report is clear in stating that the building is of a 'do-it-yourself' nature and that there is evidence of movement in the past with some cracking being evident, but with "no significant ongoing movement anticipated". Furthermore, the report states the building is capable of conversion to a residential unit.

10. Apart from the Council's concerns regarding the structural elements, other parts of class Q1 are not in dispute.

11. For these reasons, I conclude that the change of use would constitute permitted development under Class Q. Should the extent of works when implemented go beyond that indicated upon the plans, that may question whether the development would remain in compliance with Class Q.

56 days

12. Following the Council's letter of 30 June 2016, the appellant wrote back to the

Council on 4 July 2016 refusing agreement to a "further re-start of the application". In other correspondence, the appellant also questioned the Council's ability to issue its decision outside of the 56 day time limit.

13. As a matter of fact the original description included elements which could not be "permitted development" but it did also explicitly refer to an element that could fall within Class Q, that being the use of building 1 as a dwelling house. Although the Council's suggested re-description more concisely explained what was being applied for, the applicant's form of words did not make it an invalid submission. Considering the requirements within paragraph W(2) of Schedule 2, Part 3 of the GPDO, the appellant had submitted a valid application at the time the Council started the application on 3 June 2016.

14. In my view, at the time of the 30 June 2016 letter, the Council should have considered not only drawing attention to the superfluous information within the original description of the proposed development but also whether the application should have been refused at that point. Under the provisions of paragraph W(3) of Schedule 2, Part 3 of the GPDO, the Council could have refused the application where:- the proposed development does not comply with; or the developer had provided insufficient information to enable the Council to establish whether; the proposed development complies with any conditions, limitations or restrictions applicable to the development in question. What the Council could not do is attempt to extend their time limit for dealing with the submission.

15. Although the original contents of the application lacked critical elements and was clearly not valid, when those elements were provided, it was a valid application. For these reasons, the Council should have issued a decision by 29 July 2016. The Council refused the prior approval application, on 22 August 2016 beyond the 56 day limit set out within the GPDO and the proposal therefore obtained deemed consent.

Other Matters

16. A further previous appeal relating to this site (ref APP/X1118/W/15/2222530) was dismissed on 7 November 2014 (in relation to the previous form of the Regulations). Both that appeal and the 2016 case that I refer to above were dismissed at least in part on the basis of the location being impractical and undesirable. Given the above circumstances, it does not fall for me to consider those matters in this case.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed.

A Harwood

INSPECTOR