
Appeal Decision

Site visit made on 6 June 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 29th June 2017

Appeal Ref: APP/Y2430/W/17/3170710

Ashby Pastures Wood, Great Dalby Road, Ashby Folville, Leicestershire

- 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 (as amended).
 - The appeal is made by Mr Peter Moore against the decision of Melton Borough Council.
 - The application Ref 16/00730/GDOCOU, dated 29 September 2016, was refused by notice dated 16 December 2016.
 - The development proposed is change of use of building to Class C3 (dwellinghouse).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the proposed development is taken from the appeal form rather than the application form for clarity and conciseness.
3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) provides for the change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouse) of the Use Classes Order 1987 (as amended), and any building operations reasonably necessary to convert the building. Schedule 2, Part 3, Paragraph W(3) states that a 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 specified conditions, limitations or restrictions. It was on this basis that the Council refused to grant prior approval.

Main Issue

4. The main issue is whether the proposal falls within the provisions for permitted development under Schedule 2, Part 3, Class Q of the GPDO, with regard to the use of the building.

Reasons

5. In terms of whether the proposal constitutes permitted development, the only area of dispute between the appellant and the Council relate to the building's use as an agricultural building. I have not been presented with any evidence
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to indicate that the proposal does not constitute permitted development for any other reason, so have focused on the area of dispute.

6. Class Q requires the use of the building to be in agricultural use at the time that the change of use is being considered. In addition, there is a requirement in Paragraph Q1(a) that the building was used solely for agricultural use as part of an agricultural unit on 20 March 2013, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
7. The appeal building is a simple barn-like structure with blockwork walls and a tiled roof. Planning permission was granted in 2003 (ref 03/00906/COU) for the adaption of the building to form holiday accommodation. I was unable to enter the building at my site visit, but from its external appearance and looking through a gap between the doors it was apparent that it has not been converted to holiday accommodation.
8. The Council contends that the 2003 permission has been implemented, with a letter from the Council dated 27 February 2009 that says it has been implemented. As a result, the Council considers the building to no longer be in an agricultural use. The appellant accepts that the permission has been implemented in terms of the site access, but argues that the building continues to be used for agricultural purposes and that works relating to other conditions attached to the 2003 permission have yet to be carried out. It is apparent that the physical conversion of the building has yet to take place, but the lawful use of the building is not clear from the evidence before me.
9. The lawful use of the building is crucial as to whether or not the proposed use would be development permitted by Class Q. In circumstances where the use is disputed, such as in this case, the proper means of conclusively determining the lawful use is through an application for a lawful development certificate (LDC). This appeal is against the refusal of an application for prior approval, not an application for a LDC. It is not the means through which such a certificate could be issued, which is, in effect, what would happen if I were to accept that the whole building is in an agricultural use. There appears to have been no application submitted for a LDC and this is what the appellant would need to do in order to have the evidence on the agricultural use of the building properly considered. Therefore, I am not in a position to come to a conclusion on the lawful use of the building and consequently cannot conclude that the proposal would be development permitted by the GPDO.

Conclusion

10. For the reasons outlined above, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR