
Appeal Decision

Site visit made on 20 July 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 01 September 2017

Appeal Ref: APP/J0405/X/16/3161726

Land at Canal Farm, Main Road, Buckland HP22 5JA

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Mrs S Gillingham against Aylesbury Vale District Council.
 - The application no: 16/02310/ACL is dated 21 June 2016.
 - The application was made under s192(1)(a) and (b) of the Act.
 - The development for which an LDC is sought is: Completion of the building operations together with the use of the finished building for residential purposes.
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Decision

1. The appeal is dismissed.

Costs

2. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Preliminary matters

3. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 21 June 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
 4. The appellant's case centres on Class MB of Part 3 to Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 [hereafter the GPDO 1995] which was in force at the time of the pertinent events. Whilst later replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 the GPDO 1995 remains relevant for the consideration of this appeal.
 5. The appeal concerns two adjoining buildings, that closest to the site entrance being a redundant implement shed adjoined by a former piggery building to the rear. I shall regard the two adjoining buildings as the "agricultural building" (singular) for the purposes of the assessment against Class MB.
 6. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law. The burden of proof is upon the appellant.
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Background

7. In June 2014, before any works were carried out, an application was made for a determination as to whether any prior approval was required for a proposed change of use of an agricultural building to a residential dwelling with associated building works pursuant to Class MB. A period of 56 days elapsed without the Council having given any notification of its decision.
8. In January 2015 a Building Notice was filed with the Council and works to the building commenced. Works ceased in October 2015 following a visit by the Council's enforcement officer who (I am told) advised that an application for planning permission should be made as the works were not permitted development. Planning permission was subsequently refused.
9. The appellant sought a legal opinion. An LDC application (the subject of this appeal) then followed. The statutory time period for a decision passed and the application remained undetermined by the Council.

Main issue

10. The main issue in this appeal is whether the deemed refusal of an LDC was well founded.

Reasons

11. The appellant's case is that, at the end of the 56 day period within which the Council could have determined the "prior approval" application (but didn't) the permission granted under Class MB would have crystallised. The appellant then (it is argued) was at liberty to implement that permission subject to compliance with the limitations at MB.1 and the conditions at MB.2¹.
12. The Council has not provided a statement. All that I know of the Council's case is that its enforcement officer, when visiting in October 2015, had expressed the view that the works that had been carried out were not permitted development.
13. The works (which I saw at my site visit) had involved the complete removal of the former piggery. New foundations had been laid to the same footprint and a concrete block and beam floor had been partly installed. The former tool store remained intact. Works to that building had barely been started.
14. There does not appear to be any dispute that a prior approval process under Class MB had successfully completed. However, the works that had been carried out, involving the removal of the piggery and the installation of new foundations, did not wholly accord with the details of the prior approval in which it had been stated that the pre-cast concrete post and panel walls, where in a poor condition, would be replaced with concrete block work². There was no suggestion, in the prior approval details, that the piggery would be removed entirely and replaced by a fresh build from new foundations.
15. The requirement for prior approval is worded as a condition attached to the grant of permission by Article 3(1) of the GPDO. It only becomes relevant if the development falls within the permitted development right in the first place. The successful completion of a prior approval process cannot legitimise development

¹ The condition at MB.2(3)(b) provides for a period of three years for the implementation of the permission.

² This had been set out in a letter from Acorus dated 7 August 2014.

which does not, to start with, fall fully within the description of the “permitted development”, as set out in Class MB.

16. The permitted development right under Class MB, in providing for the “change of use”, presupposes that the agricultural building is of such a condition that it is capable of being used as a dwelling (MB(a)). It recognizes that for the building to meet current standards and function as a dwelling some building operations might be needed (MB(b)). However, the permitted building operations are only those reasonably necessary to convert the building. The provision is from the starting point that the building is capable of conversion.
17. The submitted details indicate that, with regard to the implement store, its single skin brickwork walls would be repaired, made good and retained. I am told that the roof form would be retained and that the existing sheeting would be replaced with slates incorporating insulation³. It is unclear, however, whether the supporting roof structure could be used or whether the works would involve a new roof entirely to the same profile. If the latter this would provide a new, and substantial, structural element for the building. Additionally, the proposed removal of the rear wall to provide for an open plan kitchen/dining area would also amount to structural works. These could be factors leading to a conclusion that the building operations would be more than conversion works and would fall outside of the scope of Class MB.
18. Of particular concern is the intended fresh build of the former piggery. This was a substantial part of the overall “agricultural building” for which Class MB rights are argued. Three bedrooms, two bathrooms, a utility room, entrance hall and much of the kitchen would fall within this newly built section, leaving the dining area and living room to be accommodated in the tool shed.
19. To my mind the extent of this fresh build in the context of the overall agricultural building, together with the fact that the works would comprise structural elements (walls and roof for example) built up from new foundations would take the development beyond what could reasonably be considered to be a conversion of the existing agricultural building as a matter of fact and degree.
20. I have considered the implications of limitation MB.1(i). This limitation refers back to MB(b) and, thus, already presupposes that the development is a conversion rather than a re-build or substantial re-build (for example). It provides a list of building operations that could be carried out as part of a conversion including the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations.
21. Under MB.1(i) development is not permitted if it would consist of building operations other than those on the list. The list does not provide for the excavation and laying of new foundations or for the installation of floors. Whilst I consider the development to fall beyond what could reasonably be regarded as a conversion, the building operations in any event fall beyond those listed in MB.1(i).

³ Letter from Acorus dated 7 August 2014

Other matters

22. I have no reason to doubt that the development, if it was to be considered a conversion, would meet the other limitations at MB.1, MB.1(i) excepted.
23. I acknowledge that the walls of the piggery collapsed or became unsafe on removal of the roof; and that the new foundations had been constructed following an advisory email from Building Control. Whilst helping to explain why the piggery building was lost these matters do not alter the facts relating to the extent of new building works which would now be necessary and upon which this decision must turn.

Conclusion

24. For the reasons given above I conclude that the Council's deemed refusal to grant an LDC in respect of completion of the building operations together with the use of the finished building for residential purposes was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Susan Wraith

INSPECTOR