
Appeal Decision

Site visit made on 11 October 2017

by D Guiver LLB(Hons) Solicitor

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

Decision date: 6 November 2017

Appeal Ref: APP/M1005/W/17/3179821

Canaan Fields Farm, Chesterfield Road, Oakerthorpe, Alfreton, Derbyshire DE55 7LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class Q of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr S Slater against the decision of Amber Valley Borough Council.
 - The undated application Ref PDR/2017/0014, submitted on 13 April 2017, was refused by notice dated 14 June 2017.
 - The development proposed is change of use of agricultural building to a dwelling and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application for grant of approval in respect of development subject to this appeal was submitted using the Planning Portal and was undated. However, the application was submitted with a covering letter dated 13 April 2017 and the appellant has confirmed that copies of the application and letter were hand-delivered to the Council the same day. Despite the omission of a date the Council treated the application as valid and I have proceeded on that basis.
3. Paragraph W(3) of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) states, amongst other things, that a local planning authority may refuse an application where, in the opinion of the authority, the proposed development does not comply with any conditions, limitations or restrictions specified in Part 3 as being applicable to the development in question.
4. In its letter dated 14 June 2017 the Council informed the appellant that it did not consider the application subject to this appeal complied with a condition, limitation or restriction. Paragraph W(4) of the GDPO states that a refusal under sub-paragraph (3) is to be treated as a refusal of an application for approval for the purposes of section 78 of the Town and Country Planning Act 1990. I have therefore used the date of the letter as the date of the decision.

Application for costs

5. An application for costs was made by Mr S Slater against Amber Valley Borough Council. This application is the subject of a separate Decision.

Main Issue

6. The main issue is whether the proposal would be permitted development under Class Q of the GPDO.

Reasons

7. In 1990 planning permission was granted for the construction of a building on the appeal site for use as stables. In 2008 permission was refused for the construction of a weather protection canopy for a horse grooming area, but was allowed on appeal. The stable block and canopy form the existing building subject to this appeal.
8. Section 55 (2)(e) of the Town and Country Planning Act 1990 (the Act) provides that the use of land and buildings for agriculture does not constitute development for the purposes of the Act. At some time the appellant's use of the building and associated land was changed to agricultural use. The appellant states that this occurred shortly after he acquired the appeal site in 2010 and continues to the present time. On the evidence before me I see no reason to question that assertion.
9. The Council has characterised the agricultural use as a 'hobby farm' rather than being an established agricultural unit. However, the evidence before me supports the appellant's contention that the use was for the purposes of a business or trade carried on at the site.
10. Subject to a number of exceptions in paragraph Q.1, Class Q of the GDPO permits the change of use of an agricultural building and land within its curtilage into a dwellinghouse within Class C3 of the GDPO. The first exception states that development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.
11. Paragraph X of the GDPO defines an agricultural building as a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and 'agricultural use' refers to such uses. At the time of my site visit the building in question was used, amongst other things, for the keeping of pigs, which is an existing agricultural use.
12. Because of previous applications in relation to the appeal site, Council officers have visited on a number of occasions. On divers visits officers found that a number of items not used for agriculture were stored within the building, including a bath, fridge, sink and microwave oven.
13. The appellant states that the bath was temporarily stored prior to adaptation for use as a feeding trough and the fridge was used to keep medicines/vaccines for the animals, although it also held milk. The sink was used for hygiene required when working with animals. The microwave was present to allow the appellant and workers to heat meals, which is not a direct agricultural use.
14. Other items seen during the Council officers' visits, both within the building and on the associated land, were crates, boxes, tools, plant and machinery, various items of scrap metal, trailers, vehicle parts and a van parked under the canopy. At the time of my site visit many of these items had been removed but there were still many crates, boxes and other sundry items stored in the building which did not appear to have any obvious agricultural use. Only one pen appeared to be in use for keeping pigs and the remainder of the building was given over to storage and other non-agricultural uses.

15. The Council accepts that the appeal site has an existing, albeit limited agricultural use. While it is likely that the appeal site was in agricultural use for the purposes of a business or trade on 20 March 2013, the requirement arising from Paragraph Q.1 of the GDPO is that this was the sole use of the site on that date. On the evidence before me I cannot be satisfied that the existing use is, or on 20 March 2013 was, solely agricultural.
16. Therefore, I conclude that the use of the land and building at the appeal site does not meet the criteria for permitted development in Paragraph Q.1 of the GDPO. As such the appeal site does not benefit from deemed permission under Class Q.

Other Matters

17. Subject to conditions, the Council accepted that the proposal was satisfactory in terms of highway safety, land contamination, noise, flooding, siting and location, and design and external appearance. However, the matter before me in this appeal relates to the question of whether the proposal would be permitted development under Class Q of the GPDO, and I therefore attach little weight to these other matters.
18. The appellant has stated that the Council was late in providing its decision and refers in his costs application to Paragraph W(11)(c) of the GDPO. This paragraph provides that after the expiry of 56 days following the date on which the local planning authority received the application, development may proceed in the absence of a specific grant or refusal.
19. The Council accepts that it was one day late in providing its decision but refers to an earlier appeal decision (APP/M1005/W/16/3165458) which held that the 56-day deadline for the Council to issue a decision did not apply if the proposed development did not benefit from deemed permission under Class Q of the GDPO.
20. This appeal decision is a material consideration to which I attach significant weight. I concur with the Inspector's conclusion that, absent the benefit of deemed permission, the expiry of the 56-day deadline does not permit a development to proceed. To conclude otherwise could result in a development proceeding following a clearly misconceived application made under the GDPO rather than under Part III of the Act if the local planning authority missed the 56-day deadline.

Conclusion

21. For the reasons given above, and taking into account all other matters, I therefore conclude that the appeal should be dismissed.

D Guiver

INSPECTOR