

Appeal Decision

Site visit made on 3 July 2019

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal ref: APP/P4415/C/18/3217946

Land at The Stables, Common Road, Thorpe Salvin, South Yorkshire S80 3JJ

- The appeal is made by Mr David Bonsall under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Rotherham Metropolitan Borough Council.
- The notice was issued on 22 November 2018; reference No. EN2018/0254.
- The breach of planning control was: Without planning permission, the formation of additional openings in the approximate position shaded red on the elevations plan attached to the notice within the building shaded black on the site plan.
- The requirement of the notice is to: Block up all additional windows and doors from the building over and above those approved under the original permission for the building (marked in the approximate position shaded red on Plan B attached to the notice) using matching block work to existing elevations.
- The period for compliance with the requirement is 8 weeks.
- The appeal was made on grounds (c) and (g) as set out in the amended Act.

Summary of decision: The enforcement notice is varied and upheld

Appeal property

1. The appeal building is a substantial concrete block, pitched roof building that has the appearance of a 2 storey dwelling. The enforcement notice deals with several recently constructed domestic style windows that have been inserted in the front and rear elevation walls.

Planning history

2. Relevant planning history:

RB/1988/0116 – Outline application for erection of bungalow for nursery business and barn for storage. (Barn only allowed on appeal – details approved 1991).

RB/2005/0287 – Use of redundant barn as stables and hay store. (Allowed).

RB/2012/0917 – Lawful Development Certificate application for use of building, (the barn), as a dwelling. (Refused; appeal dismissed).

Council issued 2 enforcement notices 3 May 2013. (Appeals made against both notices; (Appeal Notice A; requiring demolition of barn – notice quashed: Appeal Notice B; requiring cessation of residential use – notice upheld).

RB2016/0523 – Prior notification for change of use of barn to residential use under Class Q. of the Order. (Council failed to respond in time – see para. 4, below).

The appeal on ground (c)

3. An appeal on ground (c) asserts that there has not been a breach of planning control. In an appeal on legal grounds such as this, the burden of proof lies with the appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position. The standard is the balance of probabilities.
4. The Appellant, Mr David Bonsall, made an application to the Council for prior approval for conversion of the building and an area of land surrounding it to residential use pursuant to the provisions of Class Q of Part 3, Schedule 2 of the The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order). Permission would also have been granted for building operations reasonably necessary to convert the building. The requisite period during which the Council should have considered the application passed without action on their part. Because of the Council's failure to act on his application for prior approval, Mr Bonsall sought and obtained an opinion to the effect that he was then entitled to start. That was because of the Council's failure to deal with the application, Mr Bonsall concluded that he had deemed consent under the Order.
5. However, I note that Mr Bonsall's Solicitor's opinion was given before the Court of Appeal's decision in *Keenan v Woking BC and SSCLG [2017] EWCA Civ 438, 16 June 2107* was handed down. In that Lord Justice Lindblom said: *"The sole and limited function of this provision, (the need for prior approval), was to enable the LPA to determine whether its own "prior approval" would be required for those specified details of that "permitted development". If the authority were to decide that its "prior approval" was not required, the condition would effectively have been discharged and the developer could proceed with the "permitted development" – though not, of course, with any development that was not "permitted development". If, however, the authority failed to make a determination within the 28-day period, again the developer could proceed with the "permitted development", but again not with any development that was not "permitted development". The developer would not at any stage have planning permission for development that was not, in fact, "permitted development"*.
6. The decision in *Keenan* made it clear that if an application for prior approval is submitted for works that do not fall within the scope of permitted development, and the Council fails to issue a decision within the specified period, the works do not become permitted development. Therefore no discovered benefit to Mr Bonsall arises from the Council's failure to deal with his application for prior approval in time.
7. For the appeal on ground (c) to succeed, it has to be shown that Class Q to the Order permitted the works described in the notice's allegation. That is, that the formation of additional openings in the building at The Stables, Common Road, Thorpe Salvin would have been permitted under Class Q (a) to the Order.
8. Class Q to the Order permits development consisting of —
 - (a) *a 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 (dwellinghouses) of the Schedule to the Use Classes Order; and*
 - (b) *building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.*

Development is not permitted if, (Q.1(a)), the site was not used solely for an agricultural use as part of an established agricultural unit -

- (i) on 20th March 2013, or
- (ii) 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, or
- (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.

9. It appears to be agreed that the appeal building was substantially completed by the end of 1992, following the grant of planning permission on appeal. Planning permission was granted in 2005 for use of what was said to be the redundant barn as stables and a hay store. The work to convert the building for stables use was carried out. But, according to Mr Bonsall, on the death of his tenant, who was to use the building and land for equestrian purposes, the appeal building was never used for those purposes. At that point, Mr Bonsall's history of events seems to me to be uncertain. Mr Bonsall said that, with the death of his tenant, he decided "he would try to keep the then existing equestrian business previously run by his tenant from closing, by running it himself, together with the agricultural use.". That suggests the lawful use of the land and building may have become that of a mixed equestrian and agricultural use.
10. Mr Bonsall said that as he lived some 30 miles from the barn, but worked only 600 yards from it, and realising that long hours on site would be needed, he would use part of the barn as a dwelling. He said he lived in the barn from 2005 to 2011 until failing health led to a move back to his home. His RB/2012/0917 application for a Lawful Development Certificate application for use of the barn as a dwelling was dismissed on appeal in March 2013. The 4 year period of occupation was accepted, but a Certificate was refused on the grounds that concealment of the use amounting to deception, (with some reliance on *Welwyn Hatfield and R. (on application of Fidler) v SSCLG & another [2011]*).
11. Thereafter, Mr Bonsall said that, having ceased occupation of the barn in 2011, its only use on 20 March 2013, (the Class Q limitation date), was for agriculture. He was therefore entitled to carry out the conversion works.
12. In my view, there must be substantial doubt that the lawful use of the appeal barn on 20 March 2013 was solely that of agriculture within an established agricultural unit as required under Class Q. Whilst "Agricultural unit" is not defined in Article 2(1) of the Order, two definitions are found in the Second Schedule. Paragraph X in Part 3 of the Second Schedule says that: For the purposes of Part 3 — "agricultural building" means 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;. It defines an "established agricultural unit" as "agricultural land occupied as a unit for the purposes of agriculture – (b) for the purposes of Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins.". In my view, there was no agricultural business being carried out on 20 March 2013.
13. Cessation of an agricultural use before 20 March 2013 does not disqualify the benefits of Class Q, (Q.1(a)(ii)). But there had to be an agricultural use before that date and no change of use of the building to any other use since the date when the agricultural use ceased. In the present instance, the evidence

suggests, at best for Mr Bonsall, there was a lawful mixed use of the appeal building some time before March 2013 for equestrian and agricultural use. That was, because on the death of his tenant, Mr Bonsall said he tried keep equestrian business running together with the agricultural use. Even if it might be argued that a equestrian and agricultural use mixed did not disqualify a favourable application of Class Q, there was scant evidence of an agricultural use of the building for purposes of a trade or business at that, or, indeed, any other time.

14. My conclusion is that the appeal on ground (c) must fail.

The appeal on ground (g)

15. An appeal on ground (g) asks that more time is given to comply with the requirements of the notice. The enforcement notice period for compliance is 8 weeks. Mr Bonsall said 6 months would be needed to ensure that the works could be carried out in summer. The Council said 3 months were adequate. It was not clear whether that was a slip or a concession. I will however, increase the period for compliance to 3 months. To that extent, the appeal on ground (g) succeeds.

FORMAL DECISION

16. The enforcement notice is varied by the deletion of the words "8 weeks" in the second line of paragraph 6. on page 3 of the notice and the substitution therefor of the words "3 months". Subject to that, the varied enforcement notice is upheld.

John Whalley

INSPECTOR