



Appeal Decision

Site visit made on 11 November 2019

by J Hunter BA (Hons) Msc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2019

Appeal Ref: APP/M1005/W/19/3236299

Storage Unit, Cliffash Lane, Idridgehay, Belper, Derbyshire DE56 2SE

- 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 P of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Charlie Developments Ltd against the decision of Amber Valley Borough Council.
 - The application Ref PDR/2019/0005, dated 29 January 2018, was refused by notice dated 26 March 2019.
 - The development proposed is change of use of a B8 Storage Building to form a single dwelling
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application from states "*Please see associated statement accompanying Prior Approval Submission*". As this is not precise, I have used the description of development from the Council's decision notice. This accurately reflects the proposal. I have omitted reference to the type of application (Prior Notification) and relevant section of the General Permitted Development Order (GPDO) as they are not necessary in terms of describing the development.

Main Issue

3. The main issue relates to whether or not the proposal constitutes permitted development under Schedule 2, Part 3, Class P (storage or distribution centre to dwellings) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

4. The appeal building is a substantial steel portal frame barn with blockwork lower walls and corrugated sheet cladding above. The building sits on a concrete slab and has a number of existing glazed openings as well as double garage doors to the front elevation.
5. The GPDO states that development is not permitted by Class P if "(a) *the building was not used solely for a storage or distribution centre use on 19th March 2014 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; (b) the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.”

6. The appellant submits that the barn has been used solely for storage in connection with their property development business since the purchase of the building and surrounding land in 2008. A land registry official copy register of title confirms the transfer of ownership to the appellant in August 2008.
7. The appellant has submitted a Statement of Truth signed by one of the Directors of the business claiming that the building has been used for storage purposes since 2008. A second Statement signed by a third party states that the building has been used for storage since 2010.
8. In addition to the above, the appellant has submitted numerous delivery notes which relate to the delivery of goods to the site between 2010 and 2018. Whilst the invoicing address on these documents is the adjacent residential property and home of the appellant, I noted during my site visit that there are no other buildings large enough to reasonably accommodate the volume of materials referred to in the delivery notes. In addition, I noted the presence of similar materials, namely insulation, timber and sanitary goods within the barn during my site visit. Consequently, based upon the evidence before me and on the balance of probabilities I am satisfied that the barn was being used solely for storage on 19th March 2014 and has been used for such a purpose since that time. Accordingly, I consider that criterion Class P.1 (a) as set out above is met.
9. Notwithstanding the above, Article 3(5) b of the GPDO states that permission granted by Schedule 2 of the GPDO does not apply if “in the case of permission granted in connection with an existing use, that use is unlawful”. The main parties agree that the building was originally part of Cliffash Farm which had an agricultural use. The Council state that there has been no lawful change of use with regards to the barn and therefore its lawful use is agricultural. Without the benefit of planning permission for change of use it would be necessary for an unauthorised B8 storage use to have been carried out continuously for ten years or more for it to become lawful. There are several pieces of evidence that on the balance of probabilities would indicate that the building has been used solely for storage since 2010: prior to that time there is just one Statement, signed by a Director of the appellant company, which accounts for the period between the purchase of the building in 2008 and 2010.
10. The Council submits that photographic evidence indicates that the barn was an open sided agricultural barn in 2009 although they have not provided me with the images. The appellant’s appeal statement (paragraph 2.5) refers to a series of repairs made in 2010 to make the building more secure which would seem to support the Council’s claim that the building would have been open to the elements prior to that time and therefore unlikely to be used for the storage of valuable construction materials and machinery. Therefore, in the absence of any other substantive information that would evidence the use of the building between 2008-2010 I am not persuaded that the B8 storage use has been carried out continuously for ten years or more and therefore, and on the balance of probabilities, it is unlawful. Accordingly, I conclude that the deemed permission granted by Schedule 2 of the GPDO does not apply to the appeal proposal.

Other Matter

11. As I have concluded that the proposal is not permitted development for the purposes of the GPDO it does not now fall on me to assess the proposal against detailed prior approval criteria.

Conclusion

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

J Hunter

INSPECTOR