



Appeal Decision

Site visit made on 26 May 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2020

Appeal Ref: APP/Q1153/W/19/3243712

Barn at Dove Cottage, Down House Farm, Mill Hill Lane, Tavistock, Devon PL19 8NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mrs Sarah Heaps against the decision of West Devon Borough Council.
 - The application Ref 2547/19/PDM, dated 31 July 2019, was refused by notice dated 16 October 2019.
 - The development proposed is prior approval for proposed change of use of agricultural building to dwellinghouse (Class C3) and for associated operational development (Class Q(a+b)).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the description of the development in the heading from the decision notice and appeal form as this accurately describes the proposal.
3. The Council as confirmed that the second reason for refusal concerns agricultural tenancy and should have referenced part Q1(e) of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). This is clear from commentary in the Committee Report and as the appellant has addressed this issue in the appeal statement no party has been prejudiced in this respect.

Main Issues

4. The main issue in this case is whether or not the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO and, in particular:
 - whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse,
 - whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or if the building was not in use on that date, when it was last in use, and
 - whether the site is or was occupied under an agricultural tenancy and, if so, whether the necessary express consent of both the landlord and the tenant have been obtained to undertake the proposal.

Reasons

Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse.

5. The proposed dwelling is shown to have windows along the broadly western elevation that would light and provide aspect to a number of principal habitable rooms. Just beyond this elevation planning permission was granted in 2006 for a fairly sizeable B1/B8 building. The appellant has confirmed that this permission has been commenced within the statutory period. It is also explained that this B1/B8 building project begun by the appellant has been abandoned and the scheme is no longer wished to be pursued. It is argued that in any approval for the present proposal it could be conditioned to ensure the removal of the ground works associated with the B1/B8 building and for the land to be returned to its former state.
6. If it is accepted that the B1/B8 scheme has been lawfully commenced, I consider that the evidence available does not clearly demonstrate that this scheme has been abandoned in planning terms. Furthermore, I am not satisfied that a planning condition attached to a prior approval could be used to extinguish the B1/B8 permission especially where such conditions need to relate to the subject matter of the prior approval.
7. While the site remains in single ownership pragmatically it may not be sensible for both schemes to take place. However, there is no physical reason why the building could not be converted to a dwelling and the B1/B8 building also constructed. It would not be appropriate to agree to the provision of a dwelling next to a site which could in the future accommodate the B1/B8 building. Such proximity would have an unacceptable impact on the living conditions of future occupiers of the dwelling. In the absence of a secure legal mechanism that would lawfully prevent the B1/B8 building from being constructed, I conclude that the location of the building would make it undesirable for it to be changed to a dwellinghouse.

Whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or if the building was not in use on that date, when it was last in use.

8. It appears from the information before me that the building was constructed as an agricultural building and that no permission has been granted for an alternative use. There is conflicting evidence on the use of the building over the past years, which is formed by two separate barns¹. The information from the appellant at the appeal stage seeks to respond to the comments, information and evidence from local residents who have set out a case that the building has not been used for agricultural purposes.
9. The appellant's submissions includes a statutory declaration from a local farmer who confirms that he used the land holding from 2001 to 2015, including the appeal building, for agricultural purposes and this was used in conjunction with his wider holding. Since 2015, the declaration indicates that this farmer has used the building for storage related to agricultural purposes. As this information is presented in the form of a statutory declaration it has a high evidential value and it is consistent with the statutory declaration from the

¹ A further end section falls as a separate building in separate ownership and forms no part of the proposal.

appellant. My site visit, which can only be a snap shot of the present use of the building, does not provide much assistance to the situation on 20 March 2013 which is the key date in the GPDO.

10. I have carefully considered the contrary evidence and all the background information and detail that has been provided by local residents, including the submissions at the appeal stage. Clearly there is a disagreement on the past use of the building. However, the first-hand evidence in the form of the statutory declarations from the owner of the building and from the farmer is precise on this issue and therefore I attach it significant weight. It is such that on the balance of all the information available before me at this time, I conclude that the building was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. The proposal would therefore accord with this part of Class Q of the GPDO.

Whether the site is or was occupied under an agricultural tenancy and, if so, whether the necessary express consent of both the landlord and the tenant have been obtained to undertake the proposal.

11. The information submitted advises that there was not a formal agricultural tenancy arranged between the appellant and the two farmers throughout the approximate last 20 year period. There is no clear evidence otherwise. As a consequence, there was no need to require the express consent of both the landlord and the tenant in relation to the submission of the proposal as required by part Q.1.(e) of the GPDO. I therefore conclude that there is no conflict with this part of Class Q of the GPDO.

Conclusion

12. Based on the balance of information before me, I have concluded that the proposal would meet the requirements of Class Q of the GPDO in respect of the second and third main issues. For the reasons explained, the location of the building near to the site for the B1/B8 building would make the change of use of the building from agricultural use to a dwellinghouse undesirable. The scheme would therefore not be acceptable in terms of this prior approval issue and I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR