



Appeal Decision

Site visit made on 26 May 2020

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/Y3425/W/20/3246629

Barns adjacent to Westley House, Marston Lane, Enson, Stafford ST18 9FH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Oliver Pittock against the decision of Stafford Borough Council.
 - The application Ref 19/30627/PAR, dated 22 May 2019, was refused by notice dated 25 November 2019.
 - The development proposed is conversion of barn to provide 1 No 2-bedroom dwelling and 1 No 4-bedroom dwelling and provision of second access.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of barn to provide 1 no 2-bedroom dwelling and 1 no. 4-bedroom dwelling and provision of second access at the barns adjacent to Westley House, Marston Lane, Enson, Stafford ST18 9FH, in accordance with the application 19/30627/PAR made on 22 May 2019, and the details submitted with it, pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 paragraphs Q(a) and Q(b) subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Mr Oliver Pittock against Stafford Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issue in this appeal are:
 - whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), with particular regard to Paragraph Q(a) and whether the appeal site is an agricultural building ; and
 - the effect of the proposal on the Cannock Chase Special Area of Conservation (SAC).

Reasons

Whether the appeal site is an agricultural building

4. Schedule 2, Part 3, Class Q of the GPDO permits development consisting of Q(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 of the Use Classes Order, and Q(b) building operations reasonably necessary to convert the building.
5. Part 3 of Paragraph X of the GPDO defines an 'agricultural building' as a building used for agriculture and for the purposes of a trade or business. Whether or not the appeal building was an agricultural building on or before the relevant date of 20 March 2013 is a matter of fact and degree based on the evidence submitted and the individual merits of the case.
6. The appeal site is formed by an L shaped barn and associated land around it. The site neighbours an existing dwelling, known as Westley House, and fields in agricultural use. The site benefits from an access and driveway. The barn has a rural appearance with a corrugated metal roof and a timber external finish. The building includes a number of high-level air vents and windows and an open section. The barn's immediate setting is largely grassed but in front of it is a low U-shaped brick wall.
7. At the time of the visit the barn was largely vacant save for logs and miscellaneous items. Internally the barn retains features including animal feeders, troughs and water storage tanks.
8. The Council accept that the barn does not form part of the domestic grounds of Westley House and that the lawful use of it is an agricultural one. However, they contend that the use of the site between 1974 and 2017 for non-commercial food production has effectively superseded the established agricultural use of the site.
9. I acknowledge that the site has been severed from the neighbouring farm and sold to different owners since 1967. I also acknowledge that since then until 2017 the owner grew a number of varieties of fruit and vegetables, employed a labourer to assist, distributed any surplus to friends and family and stored produce and machinery in the barn.
10. Whilst the site has been severed from an established agricultural unit this does not mean that the lawful use of the barn and associated land has deviated from an agricultural one. Whilst the site is vacant there is nothing to suggest that an agricultural use or business could not start up once again. I am also not aware that planning permission has been granted for an alternative use at the site since 1974.
11. In this instance, the hiring of a labourer once a week to maintain the plants, in my view, would be no different to a gardener being employed to tend to a garden and does not indicate an intensive or formal operation or enterprise. Furthermore, the absence of a commercial aspect or trade activities goes some way to indicate that the activities taking place were informal. Based on the evidence before me, I am of the view that the growing of fruit and vegetables on site was nothing more than a pastime or informal activity providing food solely for the owner and his friends and family. There is no compelling evidence to indicate that the growing of fruit and vegetables amounted to a non-

commercial food production use, irrespective of the length of time it took place over.

12. As such, I find that the use of the site has not materially changed from its lawful agricultural use and the previous activities have not superseded the lawful use of the site.
13. Whilst the building was not in use on 20 March 2013 on the balance of probabilities, it was lawfully used in 1974 solely for agricultural use in connection with an agricultural unit. I, therefore, conclude that the criteria under Paragraph Q(a) are satisfied and permitted development rights apply to the site.

Effect on Cannock Chase SAC

14. The appeal site lies within the 8-15km Cannock Chase SAC Zone of Influence (outer zone). The SAC is a European site and is principally an area of lowland heathland and the most extensive such habitat in the Midlands. The SAC contains the main British population of the hybrid bilberry, a plant of restricted occurrence; and important populations of butterflies and beetles. Also found within the SAC are the European Nightjar and five species of bats.
15. As the appeal site is in close proximity to the SAC, and residential development is of a type that is likely to result in recreational visits to the protected habitat and the creation of new paths, path widening, erosion and nutrient enrichment it is necessary for me, as the competent authority for the purposes of the Habitat Regulations¹, to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SAC.
16. The Cannock Chase SAC Partnership has agreed Strategic Access Management and Monitoring Measures (SAMMM) with Natural England which requires a mitigation payment per residential dwelling from all new development within an 8km radius. However, within Stafford Borough it has been further determined that mitigation payments will only be sought from developments both within the 0-8km (inner) zone and which will deliver more than 10 dwellings.
17. Taking into consideration the site is located within the outer zone of the SAC, the modest scale of the development and in the absence of an objection from Natural England, I conclude that mitigation is already secured by development of 10 dwellings or more located in the inner zone. As such, the proposal would not have an adverse effect on the SAC.

Other Matters

18. Paragraph Q(b) relates to building operations reasonably necessary to convert the building into residential use. The Council contend in the officer's report that the proposed alterations to the building would not be in keeping with its rural context.
19. No extensions are proposed. The proposed alterations would be sympathetic to the existing building with the proposed fenestration largely utilising the position of existing openings, albeit, larger. The attractive timber framing would be retained as well as existing barn doors maintaining its rural and agricultural

¹ Conservation of Species and Habitats Regulations 2017 (as amended)

appearance. Consequently, I find that the proposed alterations to the building would be sympathetic to the rural character and appearance of the area.

20. The Council's decision notice does not allege harm in respect of living conditions for future occupiers, even though the officer's report refers to such harm. Whilst agricultural land neighbours the proposed development there is nothing to suggest that the agricultural activities taking place nearby would adversely affect the living conditions of future occupiers. As such, I find that in this regard the proposed development would be acceptable.
21. I note the representations made in respect of the planning application regarding waste water and sewerage. However, this is a matter outside of what I consider as part of this appeal.

Conditions

22. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. I have considered the conditions suggested by the Council in light of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG). In the interests of precision, clarity and brevity I have undertaken some rationalisation of the conditions suggested.
23. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of 3 years starting with the prior approval date, so it is not necessary or reasonable to impose a separate time limit condition.
24. In the interests of highway safety, I have imposed a condition for the parking and turning area and the visibility splay to be implemented in accordance with the approved plans.
25. The Council has suggested conditions for details of the materials and hard and soft landscaping proposed. However, sufficient information is shown on the submitted plans thus such conditions have not been imposed. I have still found it necessary to ensure that dead or diseased plants are replaced for 5 years following completion of the development and therefore a condition requiring this is imposed.
26. The Council has suggested a condition preventing the approved openings from being altered or replaced. I find that this condition would not be reasonable and thus it has not been imposed.
27. The Council has suggested removing permitted development rights for the enlargement, improvement or other alterations of a dwellinghouse falling within Classes A, B, C, D, E, F, G, and H of Schedule 2, Part 1; Classes A and C of Schedule 2 Part 2 and Classes A, B, C, D, E, F, G, H and I of Schedule 2 Part 14 of the GPDO.
28. Paragraph 53 of the Framework advises planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Council have not provided any substantive justification for such a blanket removal of permitted development rights and therefore I consider it unreasonable to impose such a condition.

29. The Council has suggested a condition limiting construction and delivery hours. However, given the modest scale of the proposal I consider it would not be necessary to impose such a condition.
30. The Council has suggested a condition for nest boxes. However, there is no evidence to suggest they are necessary to make the proposal acceptable in planning terms therefore the condition has not been imposed.
31. The Council has suggested a condition for a method statement for the protection of birds during the proposed works. However, there is no evidence to suggest the presence of birds on the site. Furthermore, the protection of wild birds is dealt with by different legislation and as such I do not consider it reasonable to impose this condition.
32. The Council has sought to site any gates 5m back from the highway. However, no clear justification as set out in the PPG has been provided for the suggested condition and therefore, I do not find that it would be reasonable and thus it has not been imposed.

Conclusion

33. For the reasons given above, I conclude that the appeal should be allowed and prior approval is granted.

B Thandi

INSPECTOR

Schedule of conditions (3 in total)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 188_AR_000_001_C Existing Location Plan; Drawing No 188_AR_000_002_C Existing Block Plan; Drawing No 188_AR_000_101_K Proposed Site Plan; Drawing No 188_AR_000_201_0 Visibility Splay - Existing Entrance; Drawing No 188_AR_000_202_A Visibility Splay - New Entrance; Drawing No 188_AR_030_001_0 Existing Plan; Drawing No 188_AR_030_101_D Proposed Plan; Drawing No 188_AR_040_001_0 Existing East Elevation; Drawing No 188_AR_040_002_0 Existing South Elevation; Drawing No 188_AR_040_003_0 Existing West Elevation; Drawing No 188_AR_040_011_F Proposed East Elevation; Drawing No 188_AR_040_012_F Proposed South Elevation; Drawing No 188_AR_040_013_E Proposed West Elevation; and Drawing No 188_AR_040_014_E Proposed North Elevation.
2. The development hereby permitted shall not be first occupied until the parking and turning areas and visibility have been carried out in accordance with details shown on Drawing No 188_AR_000_202_A Visibility Splay - New Entrance and Drawing No 188_AR_000_101_K Proposed Site Plan and shall be retained thereafter for the lifetime of the development.
3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.