



Appeal Decision

Site visit made on 1 December 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2020

Appeal Ref: APP/Q4625/W/20/3259369

Fernhill Farm, Fernhill Lane, Balsall Common, Coventry CV7 7AN

- 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 Q of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Flemming Construction Limited against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2020/00103/PNCUDW, dated 8 January 2020, was refused by notice dated 18 March 2020.
 - The development proposed is the prior notification for the change of use from agricultural buildings to 5 No. dwellings.
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Decision

1. The appeal is allowed and prior approval is deemed to be 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 change of use from agricultural buildings to 5 No. dwellings at Fernhill Farm, Fernhill Lane, Balsall Common, Coventry CV7 7AN in accordance with the application PL/2020/00103/PNCUDW made on 8 January 2020, and the details submitted with it.
2. In addition to the above, it should be noted that Paragraph Q.2(3) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) requires that development permitted by Part Q is to be completed within a period of three years starting with the deemed prior approval date. Paragraph W(12) requires that the development must be carried out in accordance with the details provided in the application.

Main Issue

3. Whether planning permission is deemed to have been granted by reason of the timing of the Council's Decision.

Reasons

4. Schedule 2, Part 3, Paragraph W(11) of the GPDO sets out that the development must not begin before the occurrence of one of three criteria, including (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the Applicant as to whether prior approval is given or refused.

5. The appeal application was submitted on 8 January 2020 via the Planning Portal, including the payment of the relevant fee. The Council considered that there was missing information from the submission in that there were no details of the proposed plans, including floor plans, elevations and the access. This was communicated to the Appellant on 17 January. The Appellant responded to the Council's letter on 23 January and also provided a copy of drawing 10719(ALL)-401A which showed the requested details. However, the Appellant also stated that this drawing was uploaded to the planning portal in the original submission and the Planning Portals' attachment summary of the application clearly shows this plan within the submission.
6. From the evidence before me, and on the balance of probabilities, I am of the view that the disputed plan was submitted with the original submission and would have been with the Council on 8 January or very shortly afterwards. The Appellant has provided evidence to show that the appeal application was in the Council's possession by 15 January as the other documentation had been published on its website.
7. However, even if the Council did not receive the application until 15 January, the decision notice which it issued on 18 March was after the expiry of the 56-day period. Consequently, the failure of the Council to issue its decision within the 56-day period has resulted in prior approval being deemed to be granted.

Other matters

8. The Councils' decision notice and appeal documentation outlines that its only concern over the proposal relates to the works to form a new access to a private driveway for which some works have already been undertaken. However, it is significant that these works are outside of the scope of the application submission, as defined by the 'red line' of the submitted drawings. This is also specifically stated in the supporting information to the application. As such, regardless of the timing of the Council's decision, this access does not form part of the appeal proposal and is not therefore a matter for me to consider.
9. Notwithstanding that, even if the works already undertaken for the access via the private driveway do not benefit from any planning permission (either expressly or via the GPDO), there is also direct access to Fernhill Lane from the appeal site. Therefore, this access could be used. Having said that, the fact that the Council failed to determine the application within the 56-day period renders this a moot point as prior approval for the transport and highways impacts of the development has been deemed to be granted. However, this does not mean that works which are not permitted development, or works that have not been expressly granted planning permission, can be undertaken as a result of this decision.

Conclusion

10. For the reasons given above, I conclude that the appeal should be allowed and prior approval is deemed to be granted subject to the relevant statutory conditions.

Chris Forrett

INSPECTOR