



Appeal Decision

Site visit made on 5 January 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2021

Appeal Ref: APP/H1840/W/20/3260367

Barn B, Rectory Farm, Rectory Lane, Upton Warren, Bromsgrove B61 7EL

- 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) (England) Order 2015 (as amended).
 - The appeal is made by Mr Peter Drew against the decision of Wychavon District Council.
 - The application Ref 20/00260/GPDQ, dated 31 January 2020, was refused by notice dated 2 April 2020.
 - The development proposed is notification for prior approval for the proposed change of use of an agricultural building (Barn B) to 3 smaller dwellinghouses (Class C3), and for associated operational development.
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Decision

1. The appeal is allowed, and prior approval is deemed to be granted under the provisions of 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 of an agricultural building (Barn B) to 3 smaller dwellinghouses (Class C3), and for associated operational development at Rectory Farm, Rectory Lane, Upton Warren, Bromsgrove B61 7EL in accordance with the application Ref 20/00260/GPDQ, dated 31 January 2020, and the details submitted with it.

Procedural Matters

2. Keenan v Woking BC & SSCLG [2017] EWCA Civ 438 establishes that if a Council fails to make a determination within the statutory period on any prior approval application, the developer can proceed with development which is permitted development – but they would not have permission for development that is not, in fact, permitted development. The principle upheld is that development cannot become permitted development by default if the Council does not determine a prior approval application within the statutory period.
3. R (oao Marshall) v East Dorset DC & Pitman [2018] EWHC 226 (Admin) establishes that a Council does not have power under the prior approval provisions of the order to determine whether or not the proposed development comes within the description of the relevant class in the order. The appropriate time for the Council to consider this issue is in response to an application for a certificate of lawfulness of existing use or development or an application for planning permission.

4. If no such applications are made, the Council has the power to consider whether a development is within permitted development rights in the context of enforcement proceedings.
5. Consequently, in this case, the Council's failure to refuse the application within the statutory period means that I cannot address any questions as to whether the development is permitted development or whether it accords with the relevant prior approval matters. This is to avoid prejudicing potential future proceedings or outcomes, such as an application for a certificate of lawfulness on the part of the appellant or enforcement proceedings on the part of the Council.

Main Issue

6. The main issue is whether the Council gave notice of their decision within the prescribed time period and whether prior approval is deemed to be granted.

Reasons

7. The application is dated 31 January 2020 and the Council's decision is dated 2 April 2020. The Council does not dispute this timeline and acknowledges that notification of its decision was given beyond the statutory 56 day period set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Consequently, there is no dispute and prior approval is deemed to be granted.

Conclusion

8. For the reasons given, the appeal is allowed, and prior approval is deemed to be granted.

Liam Page

INSPECTOR