



Appeal Decision

Site visit made on 10 February 2021

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2021

Appeal Ref: APP/A4710/W/20/3264442

Lower Balkram Edge Farm, Balkram Edge, Wainstalls, Halifax HX2 0UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
 - The appeal is made by Mr Milford Kemp against the decision of Calderdale Council.
 - The application Ref 20/56005/CLAS3Q, dated 16 February 2020, was refused by notice dated 15 April 2020.
 - The development proposed is the conversion of the existing barn to create one dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In the interests of brevity, the description of the proposed development provided in the planning application form has been reduced.

Main Issues

3. The main issues are:
 - Whether there is sufficient evidence to demonstrate that the barn and the surrounding land were solely in agricultural use on 20 March 2013;
 - Whether the proposed building operations exceed what is reasonably necessary for the converted barn to function as a dwelling; and
 - Whether the proposed garden would exceed the curtilage of the barn.

Reasons

Agricultural Use

4. The barn subject to the appeal is located close to a road and adjacent to the farmhouse at Lower Balkram Edge Farm just outside Mixendean. The external sides of the barn are constructed of wood with a fibre cement roof. It is currently used for agricultural purposes. The site includes 4 roughly equal sized fields to the north of the barn.
5. The Appellant has provided a page from the Council website evidencing the grant of planning permission Reference 96/00050/FUL (Kemp) for an 'Agricultural shed to house animals' at Lower Balkram Edge Farm, Balkram Edge, Wainstalls, Halifax dated 14 February 1996. A note at the bottom of the page states that there are 8 other documents associated with this page.

6. However, the Appellant has not provided a map, a plan or an officer's report confirming that the planning permission (Ref 96/00050/FUL) granted by the Council relates to the barn subject to this appeal. There appears to be at least one other barn on the farm, and it is possible that at the time of the application for that building the farm holding extended beyond what it is now. Consequently, it is not possible to confirm the status of the barn at the critical date.
7. The Appellant has provided a series of documents relating to the livestock on the farm holding. These include a 'Movement Document Under the Sheep and Goats (Records, Identification and Movement) (England) Order 2009' for Lower Balkram Edge Farm dated 14 February 2013.
8. There is also a record of Off Movements for Mount Tabor dated 4 March 2013. This confirms that cattle ear tag number UK 123609200679 belonging to Mr Milford Kemp moved off the farm 4 March 2013.
9. For the above reasons there is sufficient evidence to confirm that the land was solely in agricultural use at the critical date. However, there is not sufficient evidence to demonstrate that the barn subject to this appeal was in existence or in use as an agricultural building at that time.

Building Operations

10. The barn has a concrete floor with a steel frame construction. There are concrete block walls on all sides to a height of around 2 metres. The proposed 2-storey 5-bedroom dwelling would have a total floor space of around 180 square metres.
11. To benefit from permitted development rights any alterations to the barn must not exceed those reasonably necessary for the new structure to function as a dwelling. What is reasonably necessary is a matter of planning judgement, but the development must not amount to a rebuild.
12. It is likely that the structure would need to be reinforced as part of its conversion. In places the building is quite dilapidated. The side elevations would incorporate an exterior and interior layer of blockwork with kooltherm insulation in between. The roof would incorporate a weather sheet exterior and liner sheet interior with Kingspan insulation in between. Such works are likely to require new foundations and would therefore amount to a rebuild of the existing barn.
13. The plans submitted do not include any side elevations. The floor plans show that there would be around 5-6 windows and possibly 5 sets of doors on the ground floor. These include some very large windows around the proposed swimming pool which would occupy an area at the eastern end of the dwelling. On the first floor there would be about 10-12 windows.
14. The inclusion of a swimming pool and the introduction of very large windows, whilst no doubt providing great pleasure to any future occupant, is superfluous to the requirements of a dwelling. It goes beyond what would be reasonably necessary for the structure to function as a dwelling and, as set out in the amendments to Q2 of Schedule 2, Part 3, Class Q of the Town and Country

Planning (General Permitted Development) Order 2015 (as amended) ('the Order'), over and above what is needed to achieve sufficient natural light.¹

Garden Curtilage

15. The proposed dwelling would include a garden to the rear covering about the same area as the footprint of the barn. There would also be a smaller area of garden to the front in between the barn and the passing road. Both areas fall within what can reasonably be described as the curtilage of the existing barn.

Other Matters

16. The site lies within walking distance of a chemists, a doctor's surgery, a public house and a restaurant. Buses also serve the area. The visibility splays for the intended driveway would comply with the Council's requirements. However, since the development proposal does not satisfy all the requirements under Q1 of the Order these matters, which are linked to whether prior approval should be granted under Q2, are not relevant to the determination of the appeal.
17. It is understood that the Council did not enter the premises and instead relied upon a drive-by site inspection prior to determination of the application. A site visit is not required by law and it is not possible to comment further on this matter.

Conclusion

18. The Appellant has provided sufficient information to demonstrate that the landholding was solely in agricultural use on 20 March 2013. Further, the proposed garden would not exceed the curtilage of the existing barn.
19. However, the Appellant has not provided sufficient information to show that the barn was either in existence or in agricultural use on 20 March 2013. Moreover, the development proposal would amount to a rebuild and the completed structure would exceed what is reasonably necessary for it to function as a dwelling.
20. For these reasons the appeal against the Council's refusal to grant approval under the Order should be refused.

William Walton

INSPECTOR

¹ SI2020 No.632. The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020