



Appeal Decision

Site Visit made on 1 April 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Appeal Ref: APP/V3310/W/20/3263780

County Parish Holding 36/009/0205, Allerton Moor Drove, Chapel

Allerton, Axbridge BS26 2NR

- 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 (as amended).
 - The appeal is made by Mr Graham Brooks against the decision of Sedgemoor District Council.
 - The application Ref 15/20/00006, dated 26 March 2020, was refused by notice dated 26 May 2020.
 - The development proposed is described as Conversion of existing barn to single dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be permitted development.

Reasons

3. Under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO/Order), planning permission is granted, subject to limitations and conditions, for the change of use of agricultural buildings to dwellinghouses and building operations reasonably necessary to convert the building. However, Article 3(4) of the GPDO states that "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the [Town and Country Planning Act 1990] Act otherwise than by this Order". Accordingly, in order to benefit from any planning permission granted by Article 3(1) of the Order, the development must not be contrary to any condition on an existing planning permission.
4. In this instance, condition 3 attached to planning permission 15/12/00004 restricts the use of the building the subject of the appeal to agricultural purposes only. The condition makes no reference to permitted development rights or the GPDO, nor does it state that the operation of the GPDO or conversions under permitted development rights, such as those under Schedule 2, Part 3, Class Q of the Order, are removed.

5. However, on any reasonable reading of it, the condition is perfectly clear, precise and conclusive in that the use of the building the subject of the appeal is restricted to agricultural purposes only. The words “shall” and “only” – which respectively permit no discretion and mean solely or exclusively – in the condition are explicit and leave no room for confusion. They also provide the ‘something more’ as referred to in the Court of Appeal judgement, *Dunnett Investments Limited v SSCLG & East Dorset DC* [2017] EWCA Civ 192. Accordingly, the words used in the condition clearly demonstrate an intention to exclude the operation of the GPDO. In addition, the reason included on the Decision Notice 15/12/00004 for the condition, providing further helpful detail and unambiguous direction as to why the building was permitted, reinforces this. Despite not being expressly stated, the condition nevertheless therefore unequivocally excludes the application of the GPDO.
6. For the above reasons, the proposed conversion of the agricultural building to a dwellinghouse would be contrary to the condition imposed on planning permission 15/12/00004 and thus contrary to Article 3(4) of the Order. Accordingly, the development proposed is not permitted development under the GPDO. Instead, it is development for which express planning permission is required, and that could only be granted on application made to the local planning authority in the first instance. In coming to this view, I have taken into account the other case law brought to my attention.

Other matters

7. The other reason for refusal on the Council’s Decision Notice relates to whether the design of the building – with particular regard to internal space and the kitchen’s ceiling height – would be acceptable, under the prior approval matter set out in Paragraph Q.2(1)(f) of Schedule 2, Part 3 of the GPDO. However, as I have found that the appeal scheme is not permitted development, it is not necessary for me to make a determination on prior approval matters.

Conclusion

8. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR