
Appeal Decision

Site visit made on 23 March 2021

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2021

Appeal Ref: APP/T2405/W/20/3247604

Ash Tree Farm, Peatling Road, Countesthorpe LE8 5RD

- 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, Paragraph Q.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
 - The appeal is made by Mr and Mrs Bailey against the decision of Blaby District Council.
 - The application Ref 19/0978/CLASSQ, dated 07 August 2019, was refused by notice dated 08 October 2019.
 - The development proposed is conversion of agricultural building to one residential dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Practice Guidance advises that the starting point for Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO) is that the permitted development rights grant planning permission, subject to the prior approval requirements. However, it is necessary to determine whether the proposal falls within permitted development.
3. Permitted development rights are limited by Article 3(4) of the GPDO, which states that, 'Nothing in the Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act¹ otherwise than by the order.'
4. Class Q of the GPDO states that 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 Order²; and Q.(b) building operations reasonably necessary to convert the building, is permitted development.
5. The Council refused the application for 4 reasons. Refusal reasons 1, 2 and 4 are interrelated and pursuant to Class Q.(a), relating to a change of use. Refusal reason 3 relates to a restrictive condition on the original planning permission³ for the building. The Council does not dispute the proposal insofar

¹ The Town And Country Planning Act 1990 (as amended)

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

³ Planning Permission Reference: 05/0889/1/PY

as it relates to Class Q.(b) and I see no reason to disagree that the building operations presented under the appeal are reasonably necessary to convert the building.

Main Issues

6. The main issues are:

- Whether any approval, which may be granted by Class Q of the GPDO, is prevented by condition 4 of planning approval 05/0889/1/PY and if not;
- Whether any conditions or limitations of Class Q prevent prior approval being given;

Reasons

The effect of condition 4

7. Planning permission (ref: 05/0889/1/PY) was granted on the appeal site for the erection of a barn to store tractor, hay and straw on 27 October 2005. Condition 4 attached to that permission states, 'the use of the building hereby permitted shall at all times remain incidental to the use of the adjacent stable block and the building shall not be used as a commercial stable or livery.' The reason for the condition is in the interests of highway safety.
8. The Council asserts that condition 4 is a restricted use condition and therefore the building does not have permitted development rights to change to a dwelling. Contrary to this, the appellants assert that the condition does not remove permitted development rights for three key reasons: firstly, the condition only relates to the building not having a commercial use; secondly, the condition does not specifically mention permitted development rights are to be removed; and thirdly, the building subject to this appeal is not the one granted planning permission by 05/0889/1/PY.
9. In addition to preventing the building being used for commercial stable or livery, I find that the wording of condition 4 clearly limits the use of the building to remain incidental to the use of the adjacent stable block. The condition as presented is both straightforward and unequivocal. It includes the phrase 'remain at all times' and is therefore unambiguous and explicit. It justifies itself with a reason that explains wider impacts and its purpose and meaning can be properly understood. The effect of Article 3(4) is that it does not require an explicit reference in the decision notice itself. The wording of condition 4 is sufficiently clear to exclude the operation of the GPDO with regards to Class Q, given that a dwelling would not be a use incidental to the adjacent stable block. A reasonable reader construing the condition in the context of the permission as a whole would clearly understand this restriction.
10. I have carefully examined the comparison plan⁴ provided by the appellants and have had regard to the discrepancies shown between the approved plans and what has been built on site. I note that the comparison plan shows the building as built is approximately 0.5m lower than as approved and that the three openings are slightly smaller than as approved. There is no indication in the appellants' submissions of any discrepancies with regards to the footprint and location of the building as built. Having been to the site, I consider that any

⁴ Dwg no. Bailey P5

reasonable person with the benefit of the approved plans would conclude that the existing building is that which was approved by 05/0889/1/PY. The site is in the open countryside and has no immediate residential neighbours. As such, the minor discrepancies are not of a material effect that would be likely to come to the attention of the Council. Overall, given the minor nature of the discrepancies, I find that the development approved by 05/0889/1/PY has been implemented.

11. There is no substantive argument by the appellants that Condition 4 would not continue to apply to the building if its development is deemed to have been implemented in pursuance of 05/0889/1/PY. The condition has not been discharged and remains in force with regards to Article 3(4).
12. The change of use proposed is, therefore, restricted by the effect of Article 3(4), and as such, the provisions of class Q do not apply. It would therefore require planning permission, and any such application would be a matter for the local planning authority to consider

The effect of conditions or limitations of Class Q

13. Given my conclusion, that the proposed change of use would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not any conditions or limitations of Class Q prevent prior approval being given as it would not alter the outcome of the appeal.

Conclusion

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

S D Castle

INSPECTOR