



## Appeal Decision

Site visit made on 31 August 2021

**by J E Jolly BA (Hons) MA MSc CIH MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 September 2021.**

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**Appeal Ref: APP/L2250/W/20/3271380**

**Barn, Harts Farm, Dengemarsh Road, Lydd, Kent TN29 9JH**

- 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 (GDPO).
  - The appeal is made by Mr Stephen Beard against the decision of Folkestone and Hythe District Council.
  - The application Ref 20/0186/FH/PA, dated 25/1/2020, was refused by notice dated 7 May 2020.
  - The development proposed is prior approval for a change of use of an agricultural building to a dwelling house (Class C3), and for building operations reasonably necessary for conversion.
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### Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of an agricultural building to a dwelling house (Class C3), and for building operations reasonably necessary for conversion, at Barn, Harts Farm, Dengemarsh Road, Lydd, Kent TN29 9JH in accordance with the terms of the application, Ref 20/0186/FH/PA, dated 25 January 2020, and the plans submitted with it: Location and site plans, Elevations HF1, Proposed Floor Plans HF2, and Methodology/Detail HF3.

### Procedural Matters

2. I have used the description of development given on the Appellants' appeal form as this more precisely describes the development proposed.

### Background and Main Issues

3. The national 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 are a grant of planning permission, subject to the prior approval requirements. Therefore, it is necessary in the first instance to determine whether the proposal falls within the scope of permitted development.
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 (dwelling houses) of the Schedule of the Use Classes Order<sup>1</sup>; and Q(b) building operations reasonably necessary to convert the building, is permitted development.

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<sup>1</sup> <sup>1</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended)

5. Where development is proposed under Class Q(a) together with Class Q(b), and found to be permitted development, it is subject to the condition under Paragraph Q.2(1) that before beginning the development, an application must be made to the local planning authority for a determination as to whether the prior approval will be required as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building.
6. In this case, the Council has concluded that the proposed development would meet prior approval requirements in this respect, subject to conditions related to contamination, other than an objection to the cumulative total of the building works needed to ensure that the proposed dwelling would be safe from flooding to facilitate residential use, as it considers the building works required would go beyond the scope of Part 3, Class Q of the GDPO.
7. However, the GPDO sets out the procedure for applications for prior approval under Schedule 2, Part 3, Paragraph W.(11)(c) which says, amongst other things, that development must not begin before the expiry of 56 days following the date on which the application was received by the Council without the authority notifying the Applicant as to whether prior approval is given or refused.
8. The main parties agree that 56 days had expired before the notification or refusal was issued. Therefore, the main issues are:
  - whether planning permission is deemed to have been granted by reason of the timing of the Council's decision, and;
  - if planning permission is not deemed to have been granted, whether the extent of the building operations proposed would be reasonably necessary to ensure that the proposed dwelling would be safe from flooding, having regard to the requirements of the GPDO.

## **Reasons**

### *Timing of the Council's decision*

9. The appeal site is located beyond the settlement boundary of Lydd and faces onto Dengemarsh Road, which is a single lane track that leads towards Dengemarsh Beach. The site is classified as being within the Environment Agency Flood Zones 2 & 3a, and is surrounded by flat agricultural/grazing type land with views to Dungeness B Power Station on one side, and Lydd Camp on the other. The appeal building is a modest store/barn type building that is positioned to the left-hand side of the host dwelling when viewed from the road.
10. The proposal is for a change of use from an agricultural building to a residential dwelling. There would be building works to raise the floor level of the appeal structure in order to make the proposed dwelling safe from flooding.
11. From the evidence before me, the application for prior approval was validated by the Council on 7 February 2020, with a stated target determination date of 3 April 2020 in order to meet the requirements of Paragraph W of the GDPO. However, the Council did not issue a decision notice until 7 May 2020.

12. Therefore, while I note the predominance of homeworking during Covid restrictions and other logistical challenges to the Council's case management team at that time, the fact remains that the Council's formal decision notice was issued after the required 56-day notification period had expired.

13. Consequently, the application for prior approval is deemed to have been granted, subject to the relevant statutory conditions.

#### *Flood risk*

14. While the Environment Agency is satisfied with the general principle of the development in respect of flood risk as a consequence of the increased floor-levels proposed, the Council contends that the building works in this respect would go beyond the scope of Part 3 Class Q of the GDPO, and potentially place a burden on emergency services due to access/egress arrangements during times of extreme flood conditions. However, given my findings regarding the timing of the Council's decision above, it is not necessary for me to consider whether prior approval as to flood risk on the site should be granted or not, or indeed any other matters set out in Paragraph Q.2 (1) of the GDPO.

#### **Conditions**

15. Paragraph O.2.(2) of the GPDO attaches a condition to this type of development, requiring its completion within a period of 3 years, starting from the prior approval date. A condition relating to the commencement of development is therefore not necessary. Paragraph W.(12) also requires that the development must be carried out in accordance with the details provided in the application. Paragraph W.(13) enables additional conditions to be attached to grants of prior approval. The Council has suggested conditions related to contamination, but as planning permission is already deemed to have been granted without the need for prior approval, there are no means for me to attach additional conditions beyond the standard ones.

#### **Conclusion**

16. As notice was not served within the 56 days required under Paragraph W.(11) (c) of the GDPO, planning permission is deemed to have been granted on 4 April 2020. I therefore conclude that the appeal should be allowed.

*J E JOLLY*

INSPECTOR