



Appeal Decision

Site visit made on 18 August 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/J3720/W/21/3273971

Hill Farm, Spring Lane, Langley, Stratford Upon Avon CV37 0HW

- 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 Max Whale against the decision of Stratford on Avon District Council.
 - The application Ref 20/03727/COUQ, dated 22 December 2020, was refused by notice dated 17 February 2021.
 - The development proposed is change of use of agricultural building to one dwellinghouse together with associated building operations.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. ('GPDO') provides that "Development consisting of— (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 to the Use Classes Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule" is development permitted by the GPDO, subject to limitations and conditions.
3. However, Article 3 (5) of the GPDO states that "The permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;" The purpose of this provision is to prevent unlawful development from acquiring permitted development rights.
4. In this case, it is common ground between the main parties that prior to the submission of application (20/03727/COUQ) works comprising the installation of cladding on two elevations and structural work to its steel portal frame were undertaken to the appeal building ('the barn'). As such, one of the disputes between the main parties is whether or not because of these works and having regard to Article 3 (5) of the GPDO, the barn benefits from the permitted development rights granted by Schedule 2 of the GPDO.

5. Furthermore, paragraph Q.1 of the GPDO states that development is not permitted by Class Q if— (a) the site was not used solely for an agricultural use as part of an established agricultural unit— (i) on 20th March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.
6. The appellant asserts that the barn and the wider site were in agricultural use on 20 March 2013 and that the barn continues to be used for agricultural purposes. However, the Council disputes this.
7. Finally, the appellant asserts that the Council failed to determine the prior approval application within the statutory period and therefore prior approval is deemed to be granted.
8. Against that background, the main issues are:
 - a) Whether the barn benefits from permitted development rights granted by Schedule 2 of the GPDO;
 - b) If the barn benefits from permitted development rights granted by Schedule 2 of the GPDO, whether prior approval is deemed to have been granted by reason of the timing of the Council's decision; and,
 - c) If prior approval is not deemed to have been granted, whether the proposal would be permitted development under the provisions of Class Q of the GPDO, with regard to the site being used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.

Reasons

Whether the barn benefits from permitted rights granted by Schedule 2 of the GPDO.

9. At present, the barn comprises a substantial steel portal frame building, with a double curved roof clad in corrugated metal sheeting, with similar cladding along three sides, and one open side.
10. Section 55 of the 1990 Act defines 'development' as including the carrying out of building, engineering, mining or other operations. 'Building operations' include rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder. Section 55(2) also states the following operations shall not be taken for the purposes of the Act to involve the development of land- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which- (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.
11. The appellant asserts that the works constitute just the reinstallation of mainly original cladding along two sides of the barn to meet his requirements, and takes this back close to its original form, adding that the fourth side of the barn was also partially clad.
12. However, no particular reason has been given as to why any existing cladding was removed. Moreover, there is little evidence to substantiate the form and appearance of the original barn. Whilst some historic photos of the barn have been

provided, these only show a small internal section of it and are therefore inconclusive. Also, in her submissions a previous resident of Hill Farm is unable to confirm that the barn was clad on 3 sides. Indeed, based on the submitted aerial photographs, it is apparent that notwithstanding the matter of cladding the form of the barn has changed.

13. Also, on the evidence before me, a considerable period passed between the removal of the cladding and its reinstatement. Whilst this is not determinative in itself, during that time the barn looked materially different as it was just a roof with cladding on one side, supported by a relatively simple structure made apparent by its exposed slender steel posts. The modest extent of enclosure associated with the building during that time significantly limited its bulk and massing. Indeed, a photograph of this barn on the cover of the Langley Community Plan, 2012 and others provided by third parties, illustrate its open and distinct form.
14. Whilst most of the new structural works are internal some of these are visible from the front of the Dutch barn, including the additional lateral supports. Together with the installation of the cladding, the barn is now a more substantial structure, which due to the recent addition of the cladding is largely enclosed. Thereby changing its mainly open form and adding to its bulk and massing to give it a stronger visual presence.
15. Even if the works were in fact reinstating the barn to its former appearance, there must clearly be a point when sufficient time has elapsed to mean the appearance of the building must be considered to be its open sided arrangement and not its previous clad form. In my judgement, mindful of the time that has elapsed and having taken account of the evidence before me, these building operations have materially affected the external appearance of the barn and constitute development which does not appear to be lawful.
16. For the above reasons, in my view, it is likely that Article 3(5) of the GPDO precludes the barn from permitted development rights under Schedule 2, Part 3, Class Q of the GPDO. However, my deliberations on this matter are strictly for the purposes of this prior approval appeal.

Whether the site was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 and the timing of the Council's decision.

17. Having found that the permitted development rights granted by Schedule 2, Part 3, Class Q of the GPDO do not apply in this case, it is not necessary for me to consider the timing of the Council's decision or whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.

Conclusion

18. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR