



Appeal Decision

Site visit made on 14 March 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2022

Appeal Ref: APP/P1805/W/21/3283651

The Small Barn, Spring Lane, Romsley, Worcestershire B62 0NA

- 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.
 - The appeal is made by Mr Peter Edwards against the decision of Bromsgrove District Council.
 - The application Ref 21/00171/CUPRIO, dated 29 January 2021, was refused by notice dated 1 April 2021.
 - The development proposed is Prior Notification for a change of use of Agricultural Building to a Dwelling.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q, paragraph Q.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)(as amended) for the change of use of an agricultural building to a dwelling at The Small Barn, Spring Lane, Romsley B62 0NA in accordance with the terms of the application, Ref 21/00171/CUPRIO, dated 29 January 2021, the accompanying plans including location plan 2018/04-03 and proposed plan 2018/04-02A and the following conditions:
 - 1) Prior to the occupation of the development, visibility splays shall be provided at the existing access from a point 0.6 metres above ground level at the centre of the access to the application site and 3 metres back from the nearside edge of the adjoining carriageway. Nothing shall be planted or erected on the triangular area of land so formed which would obstruct the visibility described above.
 - 2) Prior to the occupation of the development pedestrian visibility splays of 2 metres by 2 metres measured perpendicularly back from the edge of the drive shall be provided on both sides of the access. The splays shall thereafter be maintained free of obstruction exceeding a height of 0.6 metres above the adjacent ground level.

Preliminary Matters

2. This appeal relates to Schedule 2, Part 3, Class Q of the GPDO. Class Q (a) permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a Class C3 use (dwellinghouse). This provision also includes, at (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building.

3. It is disputed between parties that the barn was in agricultural use on 20 March 2013, or was last in use for this, as required by paragraph Q.1.(a)(i) or (ii) of the GPDO. The remaining limitations of paragraph Q.1 are not contested between main parties. Furthermore, it is not disputed that the proposal would accord with the conditions as set out by paragraph Q.2. I see no reason, in evidence, to disagree with the Council's conclusions on these other matters.
4. In addition to the above, the Council also found that the proposal may result in a loss of habitat of a protected species. In support of the appeal the appellant has undertaken emergence surveys for bats undertaken by Chase Ecology in August and September 2021. This did not find evidence of bats using the structure. Subsequently, the Council has reported that it is satisfied that the proposal would not affect the habitat of a protected species. This is subject to the imposition of a condition for the scheme to be implemented in accordance with the protection measures identified within the survey report. Accordingly, the Council's second reason for refusal has been resolved and will no longer be considered as a main issue. I shall return to this matter later.

Main Issue

5. Consequently, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q.1(a) of the GPDO.

Reasons

6. The GPDO does not define 'agriculture' and thus the meaning set out in s336(1), of the 1990 Town and Country Planning Act applies. This refers to a range of activities including "horticulture, fruit growing, seed growing, dairy farming, and the breeding and keeping of livestock". Furthermore, Part 3, paragraph X of the GPDO defines an 'agricultural building' as "a building used for agriculture, and which is so used for the purposes of a trade or business". Therefore, to determine whether the building was in agricultural use on or before 20 March 2013 is ultimately a matter for the decision maker, with much depending on the individual circumstances of the proposal and its context.
7. The appeal building is a small brick barn at a junction opposite a farm holding and its associated buildings. It has existed on site for many years and appears on ordnance survey plans from 1882. Nevertheless, the appeal building is functionally divorced from adjacent agricultural activity and appears to have lain dormant for many years.
8. In review of the submitted evidence, Mr Cooper explains that the barn was used to store carts which were used to bring in turnips and sugar beet grown locally in fields during the 1960's. Ms Astbury states that it was used as a pigsty in the late 1950's. Mr Hodgetts said it had been used as a cart store in the 1960s and 1970s. The appellant also states that the building was last used for agricultural purposes prior to 1979. The submitted statements are brief and not made as statutory declarations. Nevertheless, they form a consistent, if piecemeal, chronology of the known use of the building.
9. I have taken into account the appeal decisions in evidence. Although each case must be considered on its own merits these demonstrate that an agricultural use would not be extinguished by temporary alternative uses or an absence of agricultural use. Furthermore, despite offering limited evidence of agricultural

use, both cases were satisfied, on balance, that the agricultural use endured. I have paid regard to these decisions in my own assessment of the proposal.

10. It is undisputed between main parties that the barn has been used for agricultural purposes in the past. The building is relatively rudimentary in form and my observations of the building indicate that it would not be well suited for most domestic storage being partially exposed to the elements. As such, the domestic use referenced by the Council is likely to have been sporadic and infrequent. Accordingly, whilst the evidence of agricultural use is limited and includes significant gaps, this evidence creates a consistent impression of its use. The evidence also partly explains the barns long periods of dormant or limited use. On these terms, the limited domestic use offered by the Council would have been unlikely to have been sufficiently sustained to erase the established historical agricultural use of the barn. Furthermore, the building has not been shown to be subject to a material change of use.
11. Based on the evidence, it is clear that the barn appears to have not been in active agricultural use 20 March 2013. Nonetheless, and whilst relatively finely balanced, the evidence indicates that the building was last used for agricultural purposes before this date. On this basis I find that the proposal would satisfy paragraph Q.1(a).

Conditions

12. Paragraph Q.2.(3) states that development under Class Q is permitted subject to the condition that development must be completed within a period of three years starting with the prior approval date. Further standard conditions are set out in paragraph W.(12) that requires development to be undertaken in accordance with the approved plans. Paragraph W.(13) allows for additional conditions to be attached that are reasonably related to the subject matter of the prior approval.
13. The proposed scheme would retain the existing roof and walls and infill the garage doors with wood and glazed sections. As such, a condition with respect to materials would not be necessary. Furthermore, the imposition of conditions for joinery details and historic building recording would not be reasonable as such requirements would not relate to Class Q and its limitations.
14. The prior approval matters include transport and highways, but the Council has not clearly explained what harmful impacts electrical vehicle charging points and cycle storage would be imposed to mitigate. Although, these would promote sustainable modes of transport this would not make these conditions necessary as part of a grant of prior approval. Nevertheless, conditions to require the retention of a vehicular and pedestrian visibility splay would allow the use of the driveway to operate safely. As such, a condition for these provisions would be necessary.
15. In consideration of Wildlife matters, S40 of the Natural Environment and Rural Communities Act 2006 requires that 'every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. This duty is similar in scope to those under the Conservation of Habitats and Species Regulations 2017. This can justify taking into account the effect on any species listed as a priority species in the UK Biodiversity Action Plan in determining a prior approval application, where the matters include amenity, siting or location.

Nevertheless, following review of the appellant's bat emergence survey protected species would not be affected by the proposal. Therefore, whilst the appellant would need to comply with the Wildlife and Countryside Act 1981, the Council's suggested ecological condition would not be necessary.

Conclusion

16. For the above reasons, the appeal is allowed, and Prior Approval granted.

B Plenty

INSPECTOR