
Appeal Decision

Site visit made on 15 March 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Appeal Ref: APP/V0510/W/21/3278432

Anglesey Farm, Lode Fen, Lode CB25 9HD

- 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 and Mrs Richard Peters against the decision of East Cambridgeshire District Council.
 - The application Ref 21/00045/ARN, dated 14 January 2021, was refused by notice dated 30 March 2021.
 - The development proposed is Change of use of two agricultural buildings (barns) to five residential dwellinghouses (C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for Change of use of two agricultural buildings (barns) to five residential dwellinghouses (C3) at Anglesey Farm, Lode Fen, Lode CB25 9HD in accordance with the details submitted with application reference 21/00045/ARN, dated 14 January 2021. The approval is subject to the conditions set out under Class Q, including that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2 (3) and subject to the following additional conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Rev C, Site Plan Rev C, AH0918166/03A, AH0918166/01B, AH0918166/02A, AH0918166/04D and AH0918166/06.
 - 2) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported to the Local Planning Authority within 48 hours. No further works shall take place until an investigation and risk assessment has been undertaken and submitted to and approved in writing by the Local Planning Authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. The necessary remediation works shall be undertaken, and following completion of measures identified in the approved remediation scheme a verification report must be prepared, and approved in writing by the Local Planning Authority.
 - 3) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) ECL0357/PETERS, dated

November 2020 by Ellingham Consulting Ltd and the mitigation measures detailed within the FRA will be implemented prior to first occupation of each dwelling hereby approved.

Application for costs

2. An application for costs was made by Mr and Mrs Richard Peters against East Cambridgeshire District Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the description of development from the Council's decision notice as this more accurately reflects the proposed development. The appellants have agreed to the use of this description.

Main Issue

4. The main issue in this appeal is whether the proposed change of use and facilitating operations would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

5. The proposed development is for the change of use of two agricultural buildings to five residential dwellings. These include the 'small barn' and the 'large barn'. These existing agricultural buildings are situated at the southern end of Anglesey Farm. There are various other buildings within the agricultural unit including a barn (hereafter referred to as the 'Disputed Barn') located approximately 100 metres to the north of the aforementioned barns.
6. GPDO paragraph Q.1(g) outlines that development is not permitted under Class Q where 'development under Class A(a) or Class B(a) of Part 6 of this Schedule [Schedule 2 to the GPDO] (agricultural buildings and operations) has been carried out on the established agricultural unit— (i) since 20th March 2013'. The only matter of contention between the main parties is whether or not this limitation is breached as a result of the construction (either in a partial or complete state) of the Disputed Barn. Neither main party contends that the Disputed Barn was erected before 20th March 2013 nor that it falls outside of the agricultural unit.
7. The evidence before me indicates that the appellants submitted prior notification to the Council of development of an agricultural barn under Schedule 2, Part 6, Class A(a) of the GPDO. In response, on 19 January 2018 the Council confirmed¹ that the prior approval of the Local Planning Authority was not required (hereafter referred to as the '2018 Prior Approval'). Both parties acknowledge that development then subsequently commenced, involving the erection of at least part of the Disputed Barn on the same site as that identified in the 2018 Prior Approval.
8. The appellants indicate that, on 13 June 2018, they received advice from their agent that the building (as erected) did not constitute permitted development under the GPDO. The appellants allege that this was because the building was designed and intended for 'livestock use' and was located within 400 metres of

¹ Council Reference: 17/02228/AGN

a dwelling², as well as being constructed of different materials to those which were specified under the 2018 Prior Approval. As a result, the appellants submitted an application to the Council for planning permission for a 'proposed agricultural building (part retrospective)'. The Council granted planning permission on 26th October 2018³.

9. In order for a development to have lawfully been carried out under Schedule 2, Part 6, Class A of the GPDO it must comply with the limitations and conditions set out therein.
10. A photograph of the Disputed Barn shown in the Council's Statement of Case demonstrates that on 11 September 2018 the building had not been erected in accordance with the plans pursuant to the 2018 Prior Approval. Indeed, the building as erected included walls comprising pre-cast concrete with timber boarding above, as opposed to the 'green metal cladding' sheets approved under the 2018 Prior Approval. Under Class A, Paragraph A.2(2)(v)(aa) states that the development must be undertaken in accordance with the details approved where prior approval is required. As such, at that time, the building breached this condition and the development had not therefore been carried out under Part 6. Whether or not the building has the same dimensions and siting as shown on the plans approved under the 2018 Prior Approval does not alter this conclusion. This is because the materials used in this case are fundamental to the appearance of the building, with a clear and significant distinction between the appearance of timber boarding and green metal cladding.
11. Furthermore, whilst it is unclear whether the building had been used for housing livestock at the time the planning application was submitted, it is evident that this proposed use was one of the reasons for the submission of that application. Indeed, in the absence of a separate planning permission, had the building been used for housing livestock upon completion then it would have breached the condition set out at Paragraph A.1(i), given the proximity in relation to neighbouring residential properties.
12. In addition, the condition set out under A.2(7) requires that where development is permitted by Class A(a), within 7 days of the date on which the development is substantially completed, the developer must notify the local planning authority in writing of that fact. There is no evidence to indicate that any such notification was sent to the Council. I note that the photograph included in the Council's statement of case shows that the construction of the building had reached an advanced stage on 11 September 2018, prior to the grant of planning permission. Nonetheless, this photograph does not demonstrate that the development had already been carried out under Part 6, given that the development comprises different materials from those described on the 2018 Prior Approval plans and that no notification had been sent to the Council confirming substantial completion.
13. Citing case law⁴, the Council has indicated that the commencement of development can comprise the laying of foundations, which I accept. The Council suggests that the laying of foundations in itself can constitute development that has been 'carried out' for the purposes of Part 6. However, to

² Breaching a limitation set out under Schedule 2, Part 6, Class A, Paragraph A.1.(i) of GPDO

³ Council Reference: 18/01079/FUL

⁴ Malvern Hills District Council v SSE and another [1982] 1 EGLR 175

follow this logic would involve ignoring the development in situ at this present time (or indeed at the time that the planning application was submitted) and stripping it back until a point is reached where it might have been considered to have been lawfully carried out under Part 6 (when foundations were laid for example). I do not concur with this interpretation of the term 'carried out'. Indeed, at the point that the development comprised different materials to those specified in the prior notification application it no longer constituted permitted development carried out under Part 6. Furthermore, there is evidence⁵ to indicate that it was always the appellants' intention to erect a building to house cattle. As such, even if I were to accept that the term 'carried out' included the laying of foundations there is no way to distinguish whether those foundations were being laid for the 2018 Prior Approval development or the cattle barn, but the evidence indicates that the latter is more likely.

14. In summary, it is evident that the development of the Disputed Barn has not been carried out under Part 6 and neither had it been at the point that the Council Planning Officer visited the site in 2018. As such, regardless of whether the term 'carried out' refers to a partially completed or completed building, in this case neither the completed nor partially completed building were carried out under Part 6 permitted development rights. It is not for me to confirm whether or not the building has been constructed in accordance with the planning permission.
15. The proposed development therefore meets the requirements of Paragraph Q.1(g). The Council do not contend that there are any other conditions, limitations or requirements within Class Q which are not met or satisfied. There is therefore no need to give them further consideration in this decision.

Conditions

16. I have imposed conditions to ensure that, in accordance with the GPDO, development must be carried out within three years from the date of this decision and in compliance with the approved plans.
17. I have imposed a condition requiring any unidentified contamination to be reported and remediated, in the interest of public health and protection of the environment.
18. I have imposed a condition requiring adherence to the measures in the submitted Flood Risk Assessment, in the interest of ensuring that the development is not susceptible to flood risk.
19. The Council suggested a condition to ensure retention of the external materials but the details submitted with the application are sufficient to control this and therefore such a condition is unnecessary.

⁵ LPA SoC Para 3.10

Conclusion

20. For the reasons given above, I find that the proposed development is permitted development and as such, having considered all matters raised, the appeal is allowed and approval is granted.

Luke Simpson

INSPECTOR