The Planning Inspectorate

Appeal Decision

Site visit made on 18 May 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2022

Appeal Ref: APP/H1840/W/21/3286418
Meadowbank Farm Dorsington Road, Dorsington, Pebworth CV37 8XB

- 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 Mark Ellis against the decision of Wychavon District Council.
- The application Ref 21/00708/GPDQ, dated 18 March 2021, was refused by notice dated 25 May 2021.
- The development proposed is notification for Prior Approval for the proposed change of use of an agricultural building to a dwellinghouse (Class C3), and for building operations reasonably necessary for the conversion.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the GPDO') for Prior Approval for the proposed change of use of an agricultural building to a dwellinghouse (Class C3), and for building operations reasonably necessary for the conversion at Meadowbank Farm Dorsington Road, Dorsington, Pebworth CV37 8XB in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph Q.2 (1) of the GPDO through application Ref 21/00708/GPDQ, dated 18 March 2021. The approval is subject to the condition 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) of the GPDO.

Preliminary Matter

2. For the purpose of my Decision, I have used the description of the development from the appellant's appeal questionnaire as this is more precise than that given in the application form.

Background

3. This appeal relates to a barn associated with Meadowbank Farm. This barn comprises a steel portal framed building which consisting of three bays and includes a pitched roof of corrugated fibre cement sheeting. The north elevation is open providing feeding troughs for livestock. The vertical elevations are part concrete blockwork and part timber cladding, with twin steel gates to the east elevation and a concrete slab floor throughout.

4. 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 any building operations reasonably necessary to convert the building.

5. Planning Practice Guidance advises that the schedule grants planning permission, subject to the prior approval requirements under paragraph Q.2(1). Paragraph W. of the GPDO, provides the procedure for applications for prior approval under Part 3.

6. The Order does not contain a requirement or provision for applications to be validated, but Paragraph W.(2) requires an application to include a range of information, including: b) a plan indicating the site and showing the proposed development. Paragraph X defines the 'site' as being the building and any land within its curtilage.

7. Paragraph W.(11) explains that development must not begin until either a) the Local Planning Authority (LPA) provides a written notice that prior approval is not required, b) the LPA provides written notice that prior approval is given, and c) the expiry of 56 days from the receipt of the application without the authority notifying the applicant as to whether the prior approval is given or refused.

8. The appellant's prior approval application was received by the LPA on the 18 March 2021. On initial assessment, the LPA found the application to be invalid for the following reason - 'The submitted location plan needs to show the red line adjoining the main highway (Dorsington Road).

9. Following discussions between the main parties, on the 30 March 2021, the appellant submitted an amended location plan which shows the red line adjoining Dorsington Road. As this was received at 23:10 (after office opening hours). The LPA is of the view that the application was made valid on application 31 March 2021. Furthermore, that because the LPAs decision dated 25 May 2021 was received by the appellant on the 26 May 2021, this was issued within the 56-day expiry period.

10. Therefore, the first matter of contention between the main parties is whether the LPA provided written notice as to whether the prior approval is given or refused within or after the expiry of 56 days.

11. Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than: (i) the installation or replacement of — (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).

12. The second matter of contention between the main parties is whether the extent of the proposed works are reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i) of Schedule 2, Part 3, Class Q of the GPDO.

Main Issues

13. Against that background, the main issues are: a) Whether prior approval is deemed to have been granted by reason of the timing of the LPAs decision; and, b) whether the extent of the proposed works are reasonably necessary to carry out building operations allowed by paragraph Q.1(i) of Schedule 2, Part 3, Class Q of the GPDO.

Reasons

Timing of Council's decision

14. The plans originally submitted with the appellant's prior approval application included a location plan, site plan and proposed elevations and floor plans. The location plan shows the barn in relation to the wider farm holding. The site plan also shows the extent of the site and includes the barn and its curtilage, with the latter being referred to as 'amenity land'. Together, the submitted drawings indicate the site and show the proposed development.

15. Furthermore, Paragraph W.(2)(b) does not require a red line adjoining the highway, it only requires that the plan should indicate the site and show the proposed development. Therefore, irrespective of the appellant's willingness to provide amended plans, the plans originally submitted with the application clearly show the extent of the site. Consequently, the information provided with the application which included the original drawings, satisfied the requirements of Paragraph W.(2).

16. On the information provided and in line with the wording and requirements of the Order, the 56 days should be considered as running from the date of the Council's receipt of the application, 18 March 2021, and 'day 1' being the day following the date of receipt (19 March 2021). The application period (56-day) therefore expired before the LPAs decision dated 25 May 2021. Accordingly, in the absence of the LPA providing a written notice under Paragraph W.(11) within the application period, planning permission would have deemed to have been granted.

Whether the extent of the proposed works are reasonably necessary to carry out building operations allowed by Class Q of the GPDO.

17. Having found that prior approval is deemed to have been granted by reason of the timing of the LPAs decision, it is not necessary for me to consider whether the extent of the proposed works are reasonably necessary to carry out building operations allowed by paragraph Q of the GPDO.

18. The LPA has referred me to the following judgement, Keenan v Woking Borough Council, and Secretary of State for Communities and Local Government [2017] EWCA Civ 438. The principle upheld in *Keenan* is that development cannot become permitted development (PD) by default if the LPA does not determine a prior approval application within the statutory period.

19. The LPAs failure to determine the application within the statutory period means that I cannot address whether the proposed barn conversion is in fact permitted by the GPDO. In other words, I cannot determine whether it complies with the limitations and conditions imposed on PD under Class Q.

20. As prior approval is deemed to be granted, the development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact PD. For the above reasons, any disputes over such matters are not within the scope of my Decision and would be for the main parties.

Conditions

21. Paragraph W.(12) of the GPDO sets out standard conditions requiring that when Paragraph W.(11)(c) applies development must be carried out in accordance with the details provided in the application, unless the local planning authority and the developer agree otherwise in writing. Also, Paragraph W.(13) provides for additional conditions to be attached that are reasonably related to the subject matter of the prior approval. However, since finding that prior approval is deemed to have been granted, there is no facility to attach further conditions in addition to the standard ones.

Conclusion

22. For the reasons given above, I conclude that the appeal is allowed and prior approval is deemed to be granted.

M Aqbal

INSPECTOR