



Appeal Decision

Hearing Held on 7 December 2022

Site visit made on 7 December 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2022

Appeal Ref: APP/Q4625/W/22/3296281

Barn A, Bowyer Farm, Lady Lane, Earlswood, Solihull B94 6AQ

- 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 GPDO).
 - The appeal is made by Mr P S and Mrs B M Bulcock against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2021/03057/PNCUDW, dated 16 November 2021, was refused by notice dated 2 February 2022.
 - The development proposed is described as "class Q development barn to dwelling house".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the header above is taken from the appeal form. The application form simply refers to the attached plans when asked to describe the proposed development. As well as a change of use of barn A to 2 dwellings, the plans indicate the removal of roller doors and the infilling of existing openings on the southern or front elevation of the building. Also, the drawings show the insertion of windows in the side and rear elevations. At the hearing, the appellant confirmed that the proposal involves the change of use of the subject building and the identified land around it as well as the referred to building operations. My assessment is made on this basis.

Main Issue

3. The GPDO grants planning permission for certain classes of development. Schedule 2 of the GPDO sets out permitted development rights (PDRs). Class Q of Part 3 of Schedule 2 defines as permitted development the change of use of a building and land within its curtilage from an agricultural use to a use falling within use class C3 (dwellinghouses). Also, Class Q allows building operations reasonably necessary to convert the building to a dwellinghouse use.
4. The Class Q PDRs are subject to various clauses and conditions. These include a requirement for a developer to apply to the local planning authority as to whether prior approval is required on various matters before beginning the proposed development. However, Article 3(5) of the GPDO states PDRs set out under Schedule 2 do not apply if, in the case of permission granted in

connection with an existing building, the building operations involved in the construction of that building are unlawful.

5. In light of the Council's refusal reasons, the main issue is whether Class Q PDRs apply to the building subject of this appeal, having regard to the lawfulness or unlawfulness of the operations involved in its construction.

Reasons

6. It is not my role in dealing with this appeal to arrive at a formal determination as to whether the construction of the building subject of the appeal (Barn A) is lawful, as would be the case if I was considering whether to issue a lawful development certificate. However, in light of the Council's refusal reason, I need to consider whether it is likely that Article 3(5) of the GPDO precludes Class Q permitted development rights. My deliberations on this matter are strictly for the purposes of this prior approval appeal.
7. There is no definition within the GPDO as to the meaning of the word "unlawful" in the context of Article 3(5). In such circumstances, I consider it appropriate to have regard to S191(2) of the Town and Country Planning Act 1990 (the Act). This states that operations are lawful at any time if no enforcement action may be taken in respect of them, either because they do not involve development, do not require planning permission or because the time for enforcement action has expired or for any other reason.
8. Barn A comprises of 2 attached parts. Both parts have a timber frame and profile metal sheet cladding to the walls and roof. The western half of the building is slightly lower than the eastern part. It is clear that the construction of Barn A involves development and no case is made that suggests otherwise.
9. I am advised that in 2015 a barn that stood on the site was destroyed by fire. The appellant applied for planning permission for a new barn as a replacement¹ and this was granted on 21 December 2015 (the 2015 permission). Condition 2 attached to this permission states that the development shall be carried out in accordance with details shown on submitted plans. These include plan number 1 that shows the elevations of the proposed building. Condition 2 goes on to specify the dimensions of the approved building as 20 metres wide, 10 metres deep and between 5 and 6 metres high. These dimensions correspond with those on the approved plans.
10. Drawings submitted by the appellant show that Barn A as built has a total building width of 18.8 metres and a depth of 9.3 metres. The height of the lower part of the building is indicated as being 4.2 metres while the higher part is 4.5 metres. As such, the width, depth and height of Barn A are all less than the dimensions of the building allowed under the 2015 permission. At the hearing, the appellant acknowledged the existing barn has not been constructed in accordance with the plans and the dimensions referred to under condition 2 of the 2015 planning permission. Therefore, the evidence indicates that the 2015 permission does not authorise the construction of Barn A.
11. Since lodging this appeal, the appellant has applied for planning permission that in effect would vary condition 2 on the 2015 permission. If granted, this application would retrospectively authorise Barn A. However, at the hearing I was advised that this application has only recently been submitted and that it

¹ Council reference number PL/2015/52614/MINFOT

has not been determined. As such, planning permission has not been granted for the construction of Barn A and so it is still required.

12. At the hearing the appellant suggested that the erection of Barn A was lawful as it replaces the building destroyed by fire. However, there is no evidence to show that such circumstances would remove the need for planning permission for the erection of the subject building.
13. Moreover, the Council has provided evidence that shows in April 2020 only the lower half of Barn A had been constructed. At the hearing, the appellant accepted that Barn A has not been substantially completed for a period in excess of 4 years. Having regard to S171B(1) of the Act, this means the construction of the barn is not lawful due to the expiration of the time period for enforcement action.
14. For the above reasons, I conclude that it is likely that the construction of Barn A is unlawful as it represents development that requires planning permission which has not been granted. Also, the time period for enforcement against the barn has not expired. As such, I conclude it is likely that Article 3(5) of the GPDO precludes Class Q PDRs in relation to the building.

Other Matters

15. The appellant states that Barn A is smaller than that allowed under the 2015 permission and so it causes comparatively less harm to the Green Belt and the visual qualities of the area. I understand the barn was built smaller than that approved for practical reasons. I also recognise the appellant's desire and need for new residential accommodation. However, such factors have no bearing on an assessment as to whether Barn A benefits from Class Q PDRs.
16. The Council accepts that the development would comply with all of the clauses under Class Q of Part 3 of Schedule 2. Also, no objections have been received from other parties to the proposal. However, such considerations fail to address the pertinent point as to the lawfulness of the construction of Barn A.
17. The appellant refers to a Council decision to grant prior approval as required under Class Q for another building (Barn D) at the appeal property. It is suggested that as the Council has accepted Class Q PDRs apply to Barn D, it would be inconsistent for them to not apply to Barn A. However, from the evidence I am uncertain whether the history of the construction of Barn A and Barn D are the same. In any event, I am tasked with considering the appeal development and so the lawfulness of the construction of Barn A. Any decision taken by the Council in respect of Barn D has no bearing on my deliberations.

Conclusion

18. For the above reasons, I find that Class Q PDRs do not apply to Barn A due to the preclusions set out at Article 3(5) of the GPDO. Therefore, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Bulcock	Appellant
Mrs Bridget Bulcock	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Tristan Hazel

DOCUMENT SUBMITTED AT THE HEARING:

1. Planning Decision Notice reference PL/2015/52614/MINFOT, dated 21 December 2015.