



Appeal Decision

Site visit made on 4 January 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2023

Appeal Ref: APP/J0405/W/22/3291865

Deans Poultry Farm, South End Lane, Northall LU6 2EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Andrew Screech (Archaylen Property Limited) against the decision of Buckinghamshire Council.
 - The application Ref 21/02050/APP, dated 14 May 2021, was approved on 25 November 2021 and planning permission was granted subject to conditions.
 - The development permitted is Re-cladding and re-roofing of agricultural building (Retrospective).
 - The condition in dispute is No 2 which states that: Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or The Town and Country Planning (Use Classes) (England) Order 1987 (as amended) or any order amending, revoking or reenacting these orders, the use of the building to which this permission relates shall only be used for the purposes of agriculture and shall not be used for any other purpose without the express grant of planning permission from the Local Planning Authority first being obtained.
 - The reason given for the condition is: To enable the Local Planning Authority to retain control and to reflect the basis upon which the application has been considered and assessed.
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Decision

1. The appeal is allowed and the planning permission Ref 21/02050/APP for Re-cladding and re-roofing of agricultural building (Retrospective) at Deans Poultry Farm, South End Lane, Northall, Buckinghamshire, LU6 2EX granted on 25 November 2021 by Buckinghamshire Council, is varied by deleting condition 2.

Background and Main Issue

2. There have been two previously refused applications¹ and associated appeal decisions which related to applications to establish whether prior approval was required for conversion of the agricultural building to two dwellings under the provisions of Part 3, Class Q of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (GPDO).
3. In dismissing the first appeal decision² the Inspector concluded that significant changes to the fabric of the existing building – including replacement of the entire roof and all external walls – went beyond what he considered were works reasonably necessary to convert it to a dwelling. He therefore found that the proposal exceeded the scope of Class Q of the GPDO and so was not ‘permitted development’.

¹ Council planning application references 18/00365/COUAR and 19/04439/COUAR

² PINS Appeal Ref: APP/J0405/W/18/3205288

4. The appellant subsequently re-clad and re-roofed the building and then made a second application as to whether prior approval was required under Class Q. That application was refused by the Council and again was dismissed at a subsequent appeal³. This time, an Inspector concluded that the re-cladding and re-roofing works carried out went beyond the normal understanding of maintenance or improvement and materially affected the external appearance of the building. The Inspector therefore found that those works constituted development which the appellant had not demonstrated as being lawful (it did not benefit from planning permission). As such the Inspector concluded that the proposal was not permitted development under Class Q of the GPDO.
5. A planning application was subsequently submitted to secure retrospective planning permission for the re-cladding and re-roofing of the building. The Council granted retrospective planning permission under Council application reference 21/02050/APP with various conditions, including condition 2 (the subject of this appeal), which restricts the use of the building to 'agriculture'.
6. The reason given for condition 2 is to enable the Council to retain control and to reflect the basis upon which the planning application was considered and assessed. The appellant objects to the condition on the basis that he considers it to be unnecessary, not relevant to the development to be permitted, imprecise and unreasonable.
7. The main issue therefore is whether the condition is necessary, reasonable, relevant and precise having regard to the need for the Council to retain control and to reflect the basis upon which the application was considered and assessed by the Council.

Reasons

8. The starting point is that the Council has granted planning permission for the development, comprising re-cladding and re-roofing of the agricultural building. The Council does not allege any harm subject to conditions. The only reason given for condition 2 is for the Council to 'retain control' and to 'reflect' that the building and development were both considered to comprise agricultural development.
9. The evidence before me indicates that the Council is concerned at the potential for the appellant to utilise Class Q permitted development rights in the future, having obtained planning permission for development to overcome previous obstacles in obtaining prior approval. However, in the absence of an explanation as to what harm would occur without condition 2, the Council has not demonstrated that the condition is necessary.
10. The GPDO does not indicate the reason why only building operations 'to the extent reasonably necessary for the building to function as a dwellinghouse' are permitted whilst others constitute development requiring a planning application. But it is clear that works which go beyond what are reasonably necessary will fall foul of the limitations laid out under Class Q.
11. Nonetheless, the Council has now granted planning permission for those works (re-cladding and re-roofing). Furthermore, the Council's officer report indicates that the Council did not consider that any harm would arise (including in terms of character and appearance). Indeed, there is no substantive evidence before

³ PINS Appeal Ref: APP/J0405/W/20/3258309

me to indicate that the development would conflict with the development plan or national planning policy in the absence of condition 2.

12. I accept that the planning history demonstrates the possible future intention of the appellant to make an application under Class Q. The Council's officer report, in dealing with the principle of development refers briefly to Local Plan⁴ Policies S1 and S3 and Neighbourhood Plan⁵ Policy EP8. The report explains that the principle of development is supported by Local Plan Policy E9 (Agricultural Development). However, no assertion is made that the development would lead to any conflict with these or any other development plan policies in the absence of condition 2. Without any clear and justified demonstration of the harm which would occur should permitted development rights be exercised it is not necessary to remove such rights.
13. Furthermore, Class Q permitted development rights are independent of the development plan policies. In other words, the GPDO grants permission for new dwellings in the countryside (subject to limitations, restrictions and conditions) even where such development might be contrary to the development plan were it to be considered in accordance with the approach prescribed within section 38(6) of the Planning and Compulsory Purchase Act 2004⁶. To remove these rights based solely on their existence, having found that the cladding and roofing would be in keeping with local character would be unreasonable.
14. Given that I have concluded that condition 2 is neither necessary nor reasonable, there is no need to consider whether or not it is precise or relevant to the development permitted. Based on the evidence before me, the development would accord with the development plan in the absence of Condition 2 and there are no material considerations of sufficient weight to indicate that Condition 2 is necessary, particularly given the compliance with the development plan.

Other Matters

15. The Parish Council objected to the planning application on the basis that it asserts that the building has been derelict for 20 years and as such the application is not for agricultural development. However, there is no substantive evidence before me to indicate that the building is not agricultural and what its use is if not agricultural. My observations at the site visit further re-enforce this position and it is not a consideration which outweighs my findings.

Conclusion

16. For the reasons given above the appeal is allowed and the planning permission is varied by deleting the disputed condition.

Luke Simpson

INSPECTOR

⁴ Vale of Aylesbury Local Plan 2013-2033 (September 2021)

⁵ Edlesborough Parish Neighbourhood Plan 2013 - 2033

⁶ id est - were a planning application to be submitted