



Appeal Decisions

Site visit made on 9 October 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2023

Appeal A Ref: APP/J0405/C/22/3310125

Appeal B Ref: APP/J0405/C/22/3310126

Appeal C Ref: APP/J0405/C/22/3310127

**Land at Mount Pleasant Farm, High Street, Burcott, Buckinghamshire
LU7 0JS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Harnak Aujla (Appeal A), Mr Gurmail Singh (Appeal B) and Mrs Amarjit Aujla (Appeal C) against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is "Without planning permission: (1) The material change of use of the building shown hatched black on the attached Plan 1, to five (5) residential dwellings; and (2) Operational development consisting of the erection of decking, a balcony, a roof extension, cladding, creation of new apertures and installation of glazing".
- The requirements of the notice are to:
 - Step 1: Permanently cease the unauthorised residential use of the building shown hatched black on the attached Plan 1.
 - Step 2: Permanently remove (demolish) all kitchens from the building.
 - Step 3: Permanently remove (demolish) all bathrooms and toilets from the building.
 - Step 4: Permanently remove (demolish) from the building, all internal partitions, walls, doors, materials, installations, fixtures, fittings and paraphernalia which facilitate the unauthorised residential use of the building.
 - Step 5: Permanently remove (demolish) the external white plastic cladding from the building.
 - Step 6: Permanently remove (demolish) from the Land, the external decking, balcony, and roof extension shown hatched black on the attached Plan 2.
 - Step 7: Permanently remove (demolish) from the building, the external windows and doors on the North facing elevation shown circled in black on Plan 3 and reinstate the open brick arches which were in place prior to the breach of planning control taking place.
 - Step 8: Permanently remove (demolish) from the building, the external windows and doors on the West facing elevation shown circled in black on Plans 4A and 4B, reinstate windows which were in place prior to the breach of planning control taking place and brick up remaining openings.
 - Step 9: Permanently remove (demolish) from the building the external windows and doors on the East facing elevation shown circled in black in Plans 5A and 5B and brick up the resulting openings.
 - Step 10: Permanently remove (demolish) from the building the external windows and doors on the South facing elevation shown circled in black on Plan 6, reinstate the archway and white wooden double barn doors which were in place prior to the breach of planning control taking place.
 - Step 11: Permanently remove any debris or materials from the Land that arise as a result of complying with Steps 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of this Notice.
- The period for compliance with the requirements is within six months of the notice taking effect.

- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld.

Background and Preliminary Matters

1. The appeals are proceeding on ground (c) only, which is that the matters alleged in the enforcement notice (EN) do not constitute a breach of planning control. This means the planning merits of the matters alleged are not relevant to the outcome of the appeals. The burden is on the appellants to demonstrate on the balance of probability, that a breach of planning control has not occurred.
2. There are appeals against a further enforcement notice relating to the wider site address, which concern the sale, display and storage of motor vehicles, storage of materials, and the laying of hardstanding. Despite comprising part of the same address, the areas of land to which this other notice relates are entirely separate. The outcomes of the appeals against each notice are therefore independent of one another, and whilst I have also determined those other appeals, I have dealt with them separately.
3. The planning history for the appeal site shows that planning permission was granted in 1994 for the conversion of farm buildings into three residential dwellings (1994 Permission). The Council has indicated that the building which is the subject of the EN was one of these farm buildings. A subsequent planning application relating to the same building was submitted in 2000. The Council has said that the plans submitted alongside this later application showed that the development authorised by the 1994 Permission had not come forward, which suggests that the 1994 Permission was not ever implemented. In turn, the Council is of the view that the lawful use of the relevant building in the appeal site remains agricultural.
4. Whilst the appellants have not directly commented on this, much of their case hinges on a letter from the Council dated 3 March 2021. This letter followed an application for a determination as to whether prior approval was required for the conversion of an agricultural barn into 5 dwellinghouses, pursuant to Article 3 and Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Within certain parameters, Class Q permits the conversion of agricultural buildings to dwellinghouses. By submitting this application, the appellants therefore acknowledged that the appeal site building was in agricultural use prior to the latest conversion (or at least presented this to be the case), which reflects the assumption of the Council. Without anything before me to suggest otherwise, I have proceeded on this same basis.
5. The appellants' principal argument in support of their case appears to be that the matters alleged in the EN comprise permitted development, and therefore do not constitute a breach of planning control. This forms the basis of the main issue.

Main Issue

6. In this context, the main issue is whether the development is permitted by the GPDO.

Reasons

Material Change of Use

7. Subject to certain parameters and conditions, a change of use of an agricultural building to a dwellinghouse may be permitted under Article 3 and Class Q of Part 3, Schedule 2 of the GPDO. It was clear on my site visit that the building which is the subject of this appeal has been converted to five residential dwellings, which is not disputed by the appellants.
8. Pursuant to paragraph Q2(1) of Class Q, Part 3, Schedule 2 of the GPDO, development will only be permitted under Class Q if, before beginning development, the developer applies to the local planning authority for a determination as to whether the prior approval of the authority is required with regard to transport/highways impact, noise impact, contamination risk, flood risk, location and external design.
9. In this instance, the Council carried out a visit of the appeal site on 20 August 2020. The Council says it was evident on this visit that the agricultural building had been internally gutted, fitted with flooring and plastered. Decking and a balcony had also been installed. Based on these observations, and because those physical changes were to be made to facilitate the new use, it seems clear that conversion of the agricultural building to residential use had begun at this point, which the appellants do not seem to dispute.
10. The application for a determination as to whether prior approval was required was not made until 5 December 2020, which means it was not made before development was begun, as required by the GPDO. This means the requisite conditions needed to benefit from the permitted development rights under Class Q were not met. As per established caselaw, development undertaken without compliance with a prior notification condition is development without planning permission¹.
11. In any event, the appellants have not provided any information to confirm whether the development would meet other conditions and parameters of Class Q. For example, no information has been provided to confirm whether the building was used solely for an agricultural use on 20 March 2013 (or if not in use at this date, when the building was last used in this way), as required by paragraph Q1(a). Moreover, I have not seen copies of any plans which may have been submitted with the prior approval notification, so have no detail regarding the individual floorspace of the residential units, nor of the cumulative floorspace of the units together. Without this information, I cannot confirm whether the development falls within the size thresholds for such conversions, as prescribed by paragraphs Q1(b) and (c).
12. I have dealt with the operational development as a separate allegation below, but note here that the physical works have gone beyond those described as permitted by Class Q, which in turn would also take the development outside that Class as a whole.

¹ Winters v SSCLG & Havering LBC [2017] EWHC 357 (Admin)

13. For these reasons, the appellants have not demonstrated on the balance of probability that the MCU benefitted from the permitted development rights afforded by Class Q of Part 3, Schedule 2 of the GPDO. In turn, I must conclude that the MCU does constitute a breach of planning control. Insofar as it relates to the MCU, the appeal on ground (c) therefore fails.

Operational Development

14. Alongside the MCU to five residential dwellings, the matters alleged comprise operational development consisting of the erection of decking, a balcony, a roof extension, cladding, creation of new apertures and installation of glazing, features which were all evident on my site visit. There is no suggestion from either party that these matters do not constitute development. I have therefore proceeded on the basis that these elements do constitute development, as per s55 of the Town and Country Planning Act 1990.
15. Notwithstanding my conclusions with regards to Class Q above, any building operations to convert an agricultural building into residential use under Class Q must be limited to the installation or replacement of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas or other services² to the extent reasonably necessary for the building to function as a dwellinghouse, and/or partial demolition to achieve such purpose. At the very least, the decking, balcony and roof extension, all of which extend beyond the original footprint of the building, go beyond the scope of these limits, and would therefore not be permitted under Class Q. Given the extent of changes to the fenestration and doorways, it is also likely that many of these elements would exceed what would have been necessary for the building to function as a dwelling (or dwellings). Without any evidence to indicate otherwise, I therefore cannot be satisfied that these components of operational development would fall within the scope of Class Q, even if the MCU had otherwise been permitted.
16. As set out, the lawful use of the relevant building within the appeal site is understood to be agricultural. Notwithstanding the position with regard to Class Q, certain works to agricultural buildings may be permitted under Class A of Part 6, Schedule 2 of the GPDO, including the erection, extension or alteration of a building. However, to benefit from such rights, the works must be reasonably necessary for the purposes of agriculture within that unit. In this instance, the operational development has all been carried out to facilitate residential uses of the building, and is not necessary for the purposes of agriculture. The works would therefore not fall within the scope of Class A.
17. Once again, this means the appellants have not demonstrated on the balance of probability that the development would benefit from permitted development rights, whether under Class Q of Part 3 or Class A of Part 6 of Schedule 2 of the GPDO. These elements of the matters alleged would therefore also constitute a breach of planning control. The appeal on ground (c) therefore fails in respect of the operational development alleged in the EN.

Other Matters

18. I note the content of the Council's letter to the appellants dated 3 March 2021, which says "if I have not sent you a decision by 8th March 2021 the Change of Use may go ahead". However, this sentence does include a caveat, which says

² Q.1(i) of Class Q, Part 3, Schedule 2 GPDO

“but this only applies if the proposal would have fallen within the scope of permitted development”. As set out in my reasons above, the development did not meet the description of the development for which permission is conferred by Class Q (or the conditions required to benefit from the Class Q rights) which means it does not fall within the scope of permitted development. In turn, this letter does not affect my conclusions.

Conclusion

19. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations, as set out below.

Formal Decision

20. The appeals are dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR