



Appeal Decision

Site visit made on 11 December 2018

by Beverley Wilders BA (Hons) PgDurb MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2019

Appeal Ref: APP/L3245/W/18/3199998

**Land to the North of New Road, Oretton, Cleobury Mortimer, Shropshire
DY14 0TW**

- 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 Mark Harding against the decision of Shropshire Council.
 - The application Ref 17/05250/PMBPA, dated 27 October 2017, was refused by notice dated 20 December 2017.
 - The development proposed is described as existing fodder store, set in north east corner, convert to one single storey dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal is permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015(GPDO), having particular regard to the following:
 - whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.

Reasons

3. The appellant submitted prior notification to the Council in 2012 under Part 6 of the GPDO for the erection of an agricultural building for the storage of farm machinery and feed (Ref 12/01147/AGR). On 3 April 2012 the Council determined that prior approval was not required for the proposed building. Dimensions of the proposed building were provided as part of the application together with a site location plan showing its position within the field.
4. It appears from the evidence that a building was subsequently constructed on site, though whilst the existing building has a similar sized footprint to the prior notification building, it is taller. This fact is not disputed by the appellant but he considers that the prior notification process does not restrict the size of the building to that detailed within the application, but rather to the overall limitations of Part 6. I do not agree with the appellant that there is scope to

deviate from the details of a building provided as part of the notification process and consequently I consider that the existing building has not been the subject of a prior notification application. Whilst there may not have been a requirement to provide dimensions and siting of the building as part of the notification process, such details were provided in this case and in any event would have been likely to have formed part of the required description of development. Therefore from the evidence before me it appears that at the point that it was constructed the existing building was not permitted development and was unauthorised.

5. There is disagreement between the main parties as to whether the existing building had been substantially completed and was in agricultural use on 20 March 2013. My attention has been drawn to evidence submitted by both parties with reference to the building in various documents and regarding the use of the building. In reaching my decision I have had regard to this evidence.
6. I note that the appellant submitted a planning application for the formation of an access at the site in 2013 (Ref 13/00377/FUL) and that the application was approved by the Council on 15 March 2013. The Council's Officer Report refers to the building being "currently under construction" and the Council's statement states that the officer visited the site on 13 February 2013. However various parts of the Officer Report also make reference to "the building" and "the building erected". The appellant states that the steels for the building were erected in Summer 2012 and has submitted an invoice to support this assertion dated 22 August 2012. He states that farm machinery was moved into it in September 2012 and that it was completed before the application for the formation of an access was submitted. Reference has been made to the planning application form for the access, though I do not appear to have been provided with a copy of it.
7. The evidence submitted is far from compelling with regard to whether or not an agricultural building was present and in use at the site on 20 March 2013. Though it seems that a steel frame was constructed sometime around August 2012, the evidence suggests that the building was not complete by February 2013 when the Council's planning officer visited the site in connection with application reference 13/00377/FUL. Whilst I note reference within the Officer Report to "the building" and to the appellant's interpretation of this, I do not consider that the officer necessarily meant completed building, particularly given the reference to it not being complete elsewhere within the report. Similarly I do not consider that the building as it exists today with an open frontage and partial overhang would necessarily be considered to be incomplete as suggested by the appellant.
8. There is no evidence to suggest that any works took place to the building between February 2013 and 20 March 2013 which would have resulted in it being completed and in use by that date. In any event, even if it was complete by that date, I do not consider that the existing building was lawful then.
9. Taking the above matters into consideration, I conclude that the existing building is not the building that was the subject of application 12/01147/AGR, that the appellant has not adequately demonstrated that an agricultural building was present and in use on the site on 20 March 2013 and that in any event the existing building was not lawful then. Consequently the proposal

fails to meet the requirements of Class Q of the GPDO and is not permitted development.

Other Matters

10. I note that in reaching its decision the Council was also concerned with regard to the dimensions of the proposed dwelling and the size of the proposed curtilage as well as with the accuracy of the plans in relation to the position of the building.
11. It appears from the evidence that the originally submitted survey drawings did not show dimensions on the floor plans and that when measured the dimensions differed from those shown on the proposed plans. However the appellant has subsequently provided a survey drawing showing dimensions for the existing building which are almost identical to the proposed building. Having regard to this and to the appellant's stated intention to re-use and not re-build the existing building, I am satisfied that the size of the proposed dwelling is not materially larger than the existing building and that the proposal would be for a change of use and would not include the enlargement of the building. Whilst the existing building is larger than that approved in 2012 (Ref 12/01147/AGR), this does not necessarily mean that the proposal could not be permitted development provided that the existing building is lawful and was in use on 20 March 2013. However for the reasons previously stated, I do not consider that this is the case.
12. With regard to curtilage, the originally submitted block plan showed the appeal site to comprise the existing building and an area of land around it including the existing access from New Road. The Council expressed concerns about the accuracy of the plan and an amended block plan and location plan have subsequently been submitted in order to clarify the position of the building in relation to other land in the appellant's ownership. Though the originally submitted block plan stated that the site area, excluding access, is 430 square metres, no such details are shown on the amended block plan and the area of any proposed curtilage is not defined on any of the submitted plans. Though a figure of 207.1m appears on the amended site location plan, it is not clear whether this is referring to the size of the curtilage and if so, where the curtilage would be.
13. Paragraph X of Schedule 2, Part 3, Class Q of the GPDO limits the curtilage to an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building. As stated, it is not clear in this case exactly where the curtilage would be and whether its size would exceed the floor area of the existing agricultural building. Consequently were I allowing the appeal, I would consider that no curtilage is proposed. However this would not prevent the change of use of the building without a curtilage if I was satisfied with the remainder of the proposal.
14. I note the appellant's reference to the fact that there is allegedly deemed consent for two dwellings on the site. However this does not affect whether or not the proposal before me would constitute permitted development. As I am dismissing the appeal, any concerns about the accuracy of the plans in relation to the position of the building need not be considered further.

Conclusion

15. For the above reasons and having regard to all matters raised, I conclude that the proposal is not permitted development and that the appeal should be dismissed.

Beverley Wilders

INSPECTOR