



## Appeal Decisions

Hearing held on 23 May 2019

Site visit made on 23 May 2019

**by K Ford MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 July 2019

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### **Appeal A Ref: APP/L3245/W/18/3213885**

#### **The Sheep Shed, Northwood Home Farm, Fauls, Whitchurch, Shropshire SY13 2BA**

- 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).
  - The appeal is made by Mr Jason Scott against the decision of Shropshire Council.
  - The application Ref 18/00259/PMBPA, dated 15 January 2018, was refused by notice dated 13 April 2018.
  - The development proposed is application for prior approval under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use.
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### **Appeal B Ref: APP/L3245/W/18/3213889**

#### **The Piggery Barn, Northwood Home Farm, Fauls, Whitchurch, Shropshire SY13 2BA**

- 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).
  - The appeal is made by Mr Jason Scott against the decision of Shropshire Council.
  - The application Ref 18/00258/PMBPA, dated 15 January 2018, was refused by notice dated 13 April 2018.
  - The development proposed is application for prior approval under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use.
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### **Decision**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Application for Costs**

3. An application for costs has been made by Mr Jason Scott against Shropshire Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

4. Both cases relate to buildings located on the same farm and as such I have considered them in the same Decision letter.

5. For both cases the description of development contained in the application forms read 'agriculture'. I have therefore used the wording in the descriptions of development used in the Council's Decision Notices for both cases.
6. In the Decision Notice for the building that is the subject of Appeal A there was incorrect references to the storage of cars. The appellant has also identified errors in the Officer's report and this has not been disputed by the Council. I have taken this into account in the determination of the case.
7. The Council determined on the 13 April 2018 that the changes proposed in both applications would require planning permission. The notification of the decisions was made after the expiry of the 56 day period for the determination of the prior approval applications. However, the judgement in Patrick Keenan v Woking Borough Council and the Secretary of State for Communities and Local Government [2017] EWCA Civ 438 has confirmed that if a development would not be permitted development then permission cannot be deemed to have been granted under the Order as a consequence of the failure to issue a prior approval determination.

### **Background**

8. The applications for prior approval were made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and would involve the change of use of the agricultural buildings to 2 single dwellings. Class Q of the GPDO states that development consisting of Q(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling under Class C3 (dwellings) of the Schedule of the Use Classes Order; and Q(b) building operations reasonably necessary to convert the building is permitted development.
9. Paragraph Q.2(1) of the GPDO states that development permitted under Class Q is subject to the condition that before beginning the development, an application must be made to the Local Planning Authority for a determination of whether the prior approval will be required in relation to an identified criteria that includes transport and highways impacts and the design or external appearance of the building. Paragraph W(3) of the GPDO states that an application for prior approval may be refused where it does not comply with any conditions or limitations applicable to Class Q or where there is insufficient information to establish such compliance.

### **Main Issues**

10. The main issues in respect of both Appeal A and B are whether:
  - the buildings have been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or whether the buildings have been in such use when last in use, or have been in such use for at least 10 years if brought into use after the specified date.
  - the proposals would be permitted development under Schedule 2, Part 3, Class Q of the GPDO with particular regard to whether the requirements of Paragraphs Q.1(a) and Q.1(b) would be met.

## Reasons

### *Sole Agricultural Use*

11. Paragraph X of Schedule 2, Part 3 of the GPDO states that an 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purpose of a trade or business. Q.1(a) of the GPDO says development is not permitted if 'the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20 March 2013 or (ii) in the case of a building which was in use before that date but not in use on that date, when it was last in use'. The onus of proof is on the appellant and the correct test that should be applied is 'on the balance of probability'.
12. The appeal sites form part of Northwood House Farm and consist of 2 buildings referred to as the Sheep Shed, which is closest to the highway, and the larger Piggery Barn building which is set further back into the site. The buildings form part of a cluster of buildings set around a yard with the farmhouse to the south. The sites are surrounded by mainly open fields and a wooded area to the south and west. There are a number of dwellings on the opposite side of the road in an otherwise rural setting.
13. There is no dispute between the parties that the buildings were designed for agricultural purposes when originally built. The appellant says agricultural activities ceased around 2001 when legislative changes associated with foot and mouth made the pig fattening business that operated from the farm unviable. This is not disputed by the Council.
14. Since this time the appellant says both buildings remained empty except for occasional uses which the appellant considers to be de minimis. In the Sheep Shed this included housing sheep and wood. There is disagreement between the parties regarding the amount of space within the building that the wood occupied but agreement that it was used for domestic purposes as firewood. In the Piggery Barn, along with domestic items, cars were stored for a period of around 3 years which is not an insignificant amount of time.
15. The statutory declarations made by the parties carry substantial weight due to their legal standing and the penalties available against those making a false declaration. However, they do contain conflicting information. At the Hearing the appellant clarified that the cars stored in the Piggery Barn were as a favour to a friend and that the money paid for the storage of the cars following their subsequent sale was as an apology for the length of time they were stored there.
16. I acknowledge the appellant's point that there has been no formal change of use of the buildings. However, whilst the appellant disputes the Council's assertion that the use within the buildings is a domestic ancillary one, the storage of cars and other domestic items in the buildings, including wood, are not uses that could be regarded as ordinarily and reasonably incidental to agriculture. This is irrespective of whether or not the buildings have been altered or could return to an agricultural use in the future. The appellant has stated that in considering a previous application the Council said that the Sheep Shed was in agricultural use and have not explained their change in stance. Be that as it may, I have limited details of previous applications on the site and in any event, my concern is primarily focused on the cases before me.

17. Taking all the information before me into account, in my judgement, on the balance of probabilities the buildings were not last used solely for an agricultural use, as required by the terms of Class Q of the GPDO. I therefore conclude that the proposed change of use of the buildings does not constitute permitted development under the terms of the GPDO.

*Requirements of Paragraphs Q.1(a) and Q.1(b)*

18. Q(b) of the GPDO identifies that the building operations reasonably necessary to convert the buildings to a dwellinghouse would be permitted development with paragraph Q.1(i) providing further detail as to what such building operations would be. These include the installation or replacement of windows, doors, roofs or exterior walls, or water or drainage, electricity, gas or other services, to the extent necessary for the buildings to function as a dwellinghouse.
19. Planning Practice Guidance advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. It also states that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use.
20. In the case of *Hibbitt*, referred to by the appellant, it was held that the building must be capable of conversion to residential use without operations that would amount either to the complete or substantial re-building of the pre-existing structure or, in effect the creation of a new building. It is therefore a matter of fact and degree and requires an element of judgement, having regard in each case to both the type and extent of the works proposed.
21. As identified in the appellant's structural report, the Piggery Barn is a steel framed building with a roof constructed of corrugated sheeting. The external walls are a mix of low blockwork and open timber cladding and profiled sheet cladding. Partially attached to the neighbouring building, the Sheep Shed is a steel frame building comprising a mix of low block walls and open timber cladding with corrugated roof sheeting. The front elevation is largely open.
22. Whilst substantial works could constitute building operations permitted within Class Q, they nevertheless are required to fall within the scope of a conversion. The proposed works for both buildings notably include the insertion of openings into the block work to create windows, replacement timber cladding on the walls and new roof coverings. Although the steel frames of the buildings may be in tact, the information before me excludes any structural calculations to demonstrate that the existing steel frames of the buildings are capable of supporting the loading resulting from the proposed works. I also note that the structural report says that the contents of the document only represent initial observations and that comments were based on only what was visible at the time of the inspection.
23. The appellant says similar conversions have been undertaken on other buildings in the area. However, I have insufficient information in which to draw a meaningful comparison with the cases before me. In any event, each case is determined on its own merits.
24. Given the extent of the work proposed in both Appeals A and B there is insufficient information before me to establish whether the buildings are

capable of functioning as dwellings without extensive works being undertaken. Consequently, without substantive evidence, I cannot find the work proposed in both Appeals A and B would not go beyond the building operations reasonably necessary to convert the buildings to residential use and I must therefore find that those works are not permitted development under the provisions of Class Q. and the proposals are developments which require an express grant of planning permission.

### **Conclusions**

25. Given my conclusions that the change of use of the building would not be permitted development under Schedule 2, Part 3, Class Q of the GPDO the fact that the Council issued its determination after the 56 day period had expired is of no consequence. For the reasons identified, I conclude that both Appeal A and B should be dismissed.

*K Ford*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|             |                   |
|-------------|-------------------|
| Mr J Scott  | Appellant         |
| Mrs J Scott | Wife of Appellant |

### FOR THE LOCAL PLANNING AUTHORITY:

|                |                    |
|----------------|--------------------|
| Mr O Thomas    | Shropshire Council |
| Mr P Mullineux | Shropshire Council |

### THIRD PARTIES

|                 |           |
|-----------------|-----------|
| Mr B Hargreaves | Neighbour |
| Mr D Phillips   | Neighbour |

## **DOCUMENTS SUBMITTED AT THE HEARING**

Statutory Declaration by David Bertram Phillips, dated 20 February 2019

Appeal Decision APP/H1840/W/17/3173481