The Planning Inspectorate

Appeal Decision

Inquiry held on 11 October 2016

Site visit made on 11 October 2016

by K R Saward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 November 2016

Appeal Ref: APP/U2370/W/15/3137151
Helms Deep Barn, Helms Deep, Long Lane, Barnacre, Garstang, Lancashire PR3 1RN

- 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, Paragraph Q of the Town and Country Planning (General Permitted Development)(England) Order 2015.
- The appeal is made by Mrs Susan Gutierrez-Inostroza against the decision of Wyre Borough Council.
- The application Ref 15/00167/MB, dated 24 February 2015, was refused by notice dated 22 April 2015.
- The development proposed is the conversion of agricultural building to residential dwelling.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in relation to the provisions of Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995. By the time of the Council's decision that Order had already been revoked by the Town and Country Planning (General Permitted Development) (England) Order 2015 which came into force on 15 April 2015. Class MB and related provisions have been re-enacted by Schedule 2, Part 3 Class Q of the 2015 Order ('the GPDO'). In these circumstances, the effect of the Interpretation Act 1978 is that anything done under the revoked Class MB now has effect as if done under Class Q. Accordingly, I refer to Class Q in my decision.

3. I have used the description of development in the heading of this decision as it appears in the Appeal Form and the Council's decision notice. The description contained in the original Application Form includes details of the siting of the barn. It identifies the proposal as being for 1, 3 bedroomed single storey house.

4. Given that the parties disagreed on matters of fact, all oral evidence at the Inquiry was given on oath or solemn affirmation.

5. There had been a difference in opinion over the location of the barn approved as an "Agricultural livestock (Alpacas) building" on 19 July 2007 pursuant to planning reference 07/00585/FUL (the 2007 permission) in comparison to the barn, as built. Having asked the parties to mark out on site where they each considered the approved barn should have been built, the Council conceded

there is no overlap in footprint and the appellant's identification of its position on drawing no. 146.102 is broadly correct.

6. It was confirmed at the Inquiry that the proposed development concerns both a change of use of the barn and building operations reasonably necessary to convert the building (Class Q.(a) and (b)).

7. It emerged at the Inquiry that the appellant's evidence concerning the materials and means of construction of the proposed dwelling related to details discussed with the Council in written exchanges which differ from those in the application. The specification subsequently formed the basis of another application for prior approval which was also refused by the Council. The appellant mistakenly believed that the two applications were the same and that her appeal addressed both. The Appeal Form clearly states the appeal is made in respect of the application made on 24 February 2015. Whilst the different specification was discussed prior to that application being refused, there is no record of the application having been formally amended. Therefore, I shall take the details set out within the application as the basis of the proposal against which this appeal is made.

Reasons

Background

8. The appeal concerns a sizeable barn constructed on the site known as Helms Deep which comprises an expansive area of open and undulating fields located in the countryside. The barn was built to house a large herd of alpacas kept on the land and to store associated feed and bedding provisions. The barn is a portal framed structure beneath a shallow pitched corrugated roof. It has no windows and only a large door at one end.

9. The provisions of Schedule 2, Part 3, Class Q of the GPDO provide for the change of use of an agricultural building to Class C3 (dwellinghouses) and building operations reasonably necessary to convert the building, as permitted development, as long as it is not excluded by paragraph Q.1. It is also subject to the condition that the developer applies to the Council for a determination as to whether prior approval is required as to the items in paragraph Q.2.

10. The reason given for the Council's decision is that permitted development rights were restricted by condition when planning permission was granted for the barn on 19 July 2007. Condition 2 of that permission reads:

    The use of the building hereby permitted shall be restricted to purposes which are ancillary to the agricultural use of the site and shall not be used for any other purpose or as a separate unit.

11. The thrust of the appellant's case is that this is not the barn for which planning permission was granted in 2007 and as such, the condition does not bite. If it does, the appellant submits that the condition does not have the effect of removing permitted development rights under Article 3(4) of the GPDO.

12. In arriving at its decision to refuse prior approval, the Council did not raise any concerns over the proposal being excluded development. However, during the course of the appeal the Council has submitted that the development would not be permitted under Q.1.(a). It maintains that there is neither an agricultural use nor one that is solely agricultural as part of an established agricultural unit.

The Council confirmed that it does not take issue with the remaining preclusions in paragraph Q.1.

Main issues

13. Based on the submissions made, the main issues may be summarised as:-

- whether or not the barn is development authorised by the 2007 planning permission having regard to the time when development began, its siting and specification;
- if the barn is approved under the 2007 planning permission, whether condition no. 2 of that permission removes permitted development rights under Article 3(1) of the GPDO;
- if the barn does not have planning permission, whether permitted development rights can be exercised pursuant to Class Q having regard to the limitations in paragraph Q.1.(a); and
- whether the appellant has provided sufficient information to establish that the proposed development complies with the conditions, limitations and restrictions specified in Part 3 of the GPDO.

Time development began

14. My consideration therefore starts with the time that development of the barn began. Clearly, if the 2007 planning permission had lapsed by the time development was begun, then it cannot have planning permission and the disputed condition will not apply.

15. Condition 3 of the permission required development to be begun not later than the expiration of 3 years beginning with the date of the permission i.e. before 19 July 2010.

16. Where development consists of carrying out operations, section 56 of the 1990 Act provides that development shall be taken to be initiated at the time when those operations are begun. This shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. "Material operation" is defined in section 56(4) and includes the digging of a trench which is to contain the foundation, or part of the foundations, of a building.

17. Sworn affidavits have been submitted by the appellant, her husband and brother to the effect that development began with the digging of test holes on Friday 30 July 2010 and over that weekend. The appellant confirmed the start date under oath and insisted she could not be mistaken. The reason the date and event are so memorable to the appellant and her husband is that work started immediately after the sale of their property in Bolton on 28 July 2010.

18. The Council produced a copy photograph of pad foundations which is marked as having been taken on 4 August 2010. As this was only a short time after expiry of the 3 year period, it had been suggested that it was likely development had already begun before the planning permission lapsed. However, the Council officer conceded that the accuracy of the date could not be corroborated. As such, it was acknowledged that no reliance could be placed on the photograph as evidence of implementation.

19. In evidence, the appellant confirmed that she knew there was a 3 year time limit, but had not in 2010 been able to recall precisely when it was due to expire. Her copy of the planning permission had been kept in a container that was stolen (and reported to the Police). The appellant also acknowledged that she had thought she was implementing the planning permission, but got the measurements wrong when determining where to build. Ultimately, the intention or belief of the appellant is not relevant in determining whether or not, as a matter of fact, the 2007 planning permission was implemented.

20. The only evidence to contradict the sworn testimony is the appellant's written response to questions raised by another Inspector when the appeal was initially proceeding by way of written representations. Following doubts expressed by the Council over whether the barn was being used for agricultural purposes, the appellant replied that she was able to state categorically that the building was in agricultural use on 20th March 2010 and would sign an affidavit to this effect. The appellant explained that this was a typographical error which should have said 20th March 2013, being the date specified in the GPDO on which the site must have been in agricultural use. When read in context, it is clear that the appellant was placing emphasis on the date for that purpose. I am satisfied that this is nothing more than a mistake and does not show the barn was already built in March 2010. Indeed, that would be contrary to the Council's own submissions that foundations had been dug by August 2010 rather than the entire structure.

21. It strikes me as odd that the appellant should have committed to such significant expense without being sure that the works were being undertaken within the time required to benefit from planning permission. She risked not only enforcement action requiring demolition of the barn, but loss of the sum invested in circumstances where financial constraints were said to have delayed the commencement of building operations. As surprising as that all is, the appellant and other witnesses, albeit family members, have all sworn that development did not commence until July 2010. They are clear, precise and consistent in their evidence. That has been done in the knowledge of the severe implications if the truth is not told.

22. In the absence of reliable evidence to indicate otherwise, this leads me to conclude that development began after the 2007 planning permission had lapsed. Thus, the barn does not as a matter of fact have planning permission and the disputed condition does not apply. Accordingly, permitted development rights cannot have been removed and there is no need for me to consider the second main issue and the case law[1] and appeal decision[2] cited in respect thereof.

Whether permitted development rights can be exercised

23. There is no dispute between the parties that more than 4 years have elapsed since the date on which the barn was substantially completed so that it is immune from enforcement action under section 171B of the 1990 Act. Permitted development rights relate only to lawful development and this

[1] *Dunnett Investments Limited v SSCLG and East Dorset District Council [2016] EWHC 534 (Admin); Commercial Land Limited/Imperial Resources SA v SSTLG [2002] EWHC 1264 (Admin)*
[2] Appeal Ref: APP/U1240/A/14/2225668

includes development immune from enforcement action[3]. Therefore, I agree with the parties that permitted development rights are not excluded by reason of the barn having been built without planning permission.

24. The issue turns to whether the proposal meets the limitations in paragraph Q.1.(a). Under this provision, development is not permitted by Class Q if the site is not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or, in the case of a building which was in use before that date but was not in use on that date, when it was last in use.

25. Paragraph X. of Part 3 defines "agricultural building" as a building used for agriculture and which is so used for the purposes of a trade or business, and excludes any dwelling house, and "agricultural use" refers to such uses.

26. Further, to be an "established agricultural unit" means agricultural land occupied as a unit for the purposes of agriculture on or before 20th March 2013 or for 10 years before the date the development begins.

27. "Agriculture" is not defined in the GPDO, but section 336 of the 1990 Act states that agriculture '*includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly'*.

28. The evidence of the appellant is that this is a registered agricultural holding. She maintains that alpacas were first introduced onto the land around January 2011 and the land is used for the breeding and selling of alpacas and sale of their fleece. The Council has drawn my attention to the cases of *Sykes v SSE* and *South Oxfordshire District Council v SSE [1981] 42 P.&C.R. 19* where a distinction was drawn between horses being fed from the land by grazing and those being fed wholly or primarily by other means so that the grazing was completely incidental. Only in the former case would there be an agricultural use. The key point for an inspector to decide in such circumstances was identified as the purpose for which the land is being used.

29. A key distinction in this case is that the alpacas are not merely being kept on the land to provide accommodation for them, but for breeding and their fleece. That is the stated purpose of the use of land and one which the appellant says has subsisted from before 20 March 2013 and continued ever since. Such a use would bring the alpacas within the term of 'livestock'.

30. Just because alpacas are being sold on does not mean they cannot be livestock. The land can still be in use for their breeding and fleece much in the same way as other species of animal more typically found on agricultural holdings. If the alpacas were not primarily fed by grazing the land and were simply kept on the land until sold, that would be different, but that is not what is happening according to the appellant's sworn testimony. There is no requirement for her evidence to be corroborated. The appellant has been very clear about the use and there is no contrary evidence or cause to consider the stated use to be

[3] Article 3(5) of the GPDO

improbable. The activity described by the appellant indicates an 'agricultural use', subject to compliance with other elements of the definition within Part 3.

31. The Council submitted that there had been times when officers had inspected the site and no or very few alpacas had been seen. This causes the Council to doubt the level of activity which it was suggested may be more akin to hobby farming. Such suggestion was firmly refuted by the appellant.

32. According to the appellant, the alpacas are bred throughout the year and brought into the barn over winter. At the time of my site visit there were around 40 alpacas in the barn with several having been previously sold. I was able to see that the landholding is expansive making it potentially difficult to spot animals at a distance. It was also apparent how the topography causes parts of the fields to be concealed with sightlines further hindered in places by hedgerow and trees where the alpacas may shelter. These factors could explain the lack of sightings.

33. Nevertheless, whilst the evidence points towards an agricultural use, it is incumbent upon the appellant to show that such use was part of a trade or business as at 20 March 2013. It logically follows that the trade or business must have continued thereafter to benefit from permitted development rights under Class Q.

34. As acknowledged by the appellant under cross-examination, no details whatsoever have been supplied of the business activity. Although the size of herd may be regarded as large for alpaca farming, there is no detailed information on how this translates to a business. It does not necessarily need to be making a profit, but it does need to be run for commercial gain. It is not enough for the appellant to assert there is a business use without substantiation when there could be other explanations. Even the levels of stock and sales going back to 20 March 2013 are unclear. Without further information it has not been demonstrated that this was and is a commercial operation.

35. Moreover, the site must be used solely for an agricultural use and this includes the barn. The Council produced a series of photographs taken at a site visit in September 2016 which show a multitude of non-agricultural items being stored in the barn scattered across significant parts of the floorspace and on the mezzanine. The items include a cabin boat, caravan as well as items of domestic furniture.

36. The parties disagree on whether the Council condoned some items being moved from outside into the barn, but that is immaterial to establishing whether the barn has been solely in agricultural use. The appellant contends that the images shown in the Council's photographs were not typical. However, the boat was still present at my site visit. Whilst the floor space had been substantially cleared there were domestic items stacked on the mezzanine floor, such as an old door and mattress amongst a multitude of seemingly non-agricultural items. Indeed, when questioned the appellant accepted the Council's assertion that there is a mixed agricultural and storage use of the barn.

37. On the evidence before me, I conclude that although the use of the land for the purpose of breeding and keeping of alpacas for their fleece would be an agricultural use, the land is not being used for that sole purpose as part of an established agricultural unit. Furthermore, there is insufficient evidence that the use is for the purposes of a trade or business. Accordingly, the proposed

development is precluded under paragraph Q.1.(a). and does not benefit form permission under Schedule 2, Part 3, Class Q of the GPDO.

The works

38. Paragraph W(3) of Part 3 provides that the local planning authority may refuse an application for prior approval, where in the opinion of the authority, the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in Part 3 as being applicable to the development.

39. The barn is a steel framed structure supported by concrete anchor points. A low level concrete wall has vertical timber boarding above and the roof is constructed of corrugated sheets. The application form identifies that the external walls would be replaced with cavity walls with an external render finish and 11 windows and 4 doors would be added. The cement fibre roof would be replaced with natural clay tiles. At the Inquiry the appellant suggested that the vertical timber boards would simply be replaced with horizontal cladding with new roof tiles and insertion of windows and doors. It transpired that those details were contained in a subsequent application. The appellant was therefore afforded opportunity to comment on the details as set out in the original application.

40. Pursuant to Class Q.b. building operations are permitted that are reasonably necessary to convert the building to residential use. The national Planning Practice Guidance (PPG) provides guidance on how Class Q should be interpreted. It explains that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house.

41. The PPG goes on to say that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

42. The Council has drawn my attention to various previous appeal decisions[4] where Inspectors have dismissed appeals for prior approval under Class Q due to the lack of a structural survey. Invariably, such cases will depend on their individual circumstances and so whilst noting those other decisions, they are not determinative in this appeal.

43. The appellant considers that because the dwelling would be single storey, the extent of works proposed could be facilitated by utilising modern construction techniques. Reliance has been placed on the experience of her husband who

[4] Appeal Refs: APP/B3410/W/15/3005883 dated 28 July 2016; APP/X1355/W/15/3003938 dated 28 July 2015; APP/Y0435/W/15/3005863 dated 29 July 2015; APP/J3530/A/14/2229019 dated 17 June 2015 and APP/M2325/W/16/3145251 dated 23 June 2016.

works in the building trade, but who is not a structural engineer. Pertinently, the appellant advised the Council in writing that if the application was considered favourably, a structural survey would then be obtained and full plans drawn up to meet building regulations. Clearly, it would be too late by then should it emerge that the structure is not sufficiently sound to tolerate the proposed operations or without more extensive works. There appears to be hardcore beneath the barn and if foundations are needed this would be likely to involve new structural elements taking the proposal outside the scope of Class Q.

44. It seems to me that even if I were to accept there would be lesser works than those described in the application, there remains a fundamental issue over whether the building is structural strong enough to support the external works. In the absence of a structural survey I simply cannot be satisfied on such scant details that the structure is able to support the external works to provide for residential use. Thus, there is insufficient information to establish compliance with the restrictions, conditions and limitations of the GPDO.

Conclusion

45. On the information available, the proposed development would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO and therefore is not development permitted by the Order.

46. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

KR Saward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Susan Gutierrez	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Killian Garvey	of Counsel, instructed by the Solicitor to the Council
He called	Franc Genley, Senior Planner
	Graham Avis, Planning Enforcement Officer

DOCUMENTS submitted at the inquiry

1. Notices of appeal and Inquiry
2. Proof of evidence of Franc Genley
3. Second proof of evidence of Franc Genley
4. Enlarged copy photographs to proof of evidence of Franc Genley
5. Approved drawing no. ML/SG/EN/B/4510; location plan scale 1:2500 and red line site plan for planning ref: 07/00585/FUL dated 19 July 2007
6. 'Note for the Inspector' on behalf of the Council dated 3 October 2016
7. A3 drawings, Appendix A and Appendix C marked by the Council to show the position of the approved barn and the barn, as built
8. Extracts of the Town and Country (General Permitted Development)(England) Order 2015 – Schedule 2, Part 3, paragraphs Q, W and X.
9. *Dunnett Investments Limited v SSCLG and East Dorset District Council [2016] EWHC 534 (Admin)*
10. *Sykes v SSE and South Oxfordshire District Council v SSE [1981] 42 P.&C.R. 19*
11. *Commercial Land Limited/Imperial Resources SA v SSTLG [2002] EWHC 1264 (Admin)*
12. References to pages 74 - 83 of the publication titled 'A Practical Guide to Permitted Changes of Use' by Martin H. Goodall
13. Appeal Decisions: APP/B3410/W/15/3005883 dated 28 July 2016; APP/X1355/W/15/3003938 dated 28 July 2015; APP/Y0435/W/15/3005863 dated 29 July 2015; APP/J3530/A/14/2229019 dated 17 June 2015 and APP/M2325/W/16/3145251 dated 23 June 2016.
14. Complete copy of prior approval application form dated 24 February 2015

15. Email from Andrea Stewart to the appellant on 25 March 2015
16. Appellant's reply to Council on works proposed, dated 2 April 2015
17. Handwritten note from the appellant to Andrea Stewart, received 17 April 2015
18. Appellant's replies to Inspector questions (undated)