

RED WELLS FARM, ROCHDALE

OPINION

Introduction

1. I am asked to advise Mr Andrew Crossley ('the Applicant') in respect to his proposed development at Red Well Farm, Lower Knowl Lane, Rochdale ('the Site'). The Site lies within the jurisdiction of Rochdale Borough Council ('the Council') as the relevant local planning authority.
2. On 21 November 2023, an application for prior approval under Class Q¹ was made to the Council in respect to the Site, for the conversion of a barn at the Site into a residential dwelling ('the Class Q Application').
3. Critically, the Council did not respond to the Class Q Application until 20:54 on 16 January 2024.
4. I am asked to advise in respect to the discrete issue as to whether this engaged the '56 day rule', given that the email was sent outside of business hours. In my firm view, this email was insufficient to satisfy notice within 56 days and thereby prior approval need not be required for development to proceed pursuant to Class Q. The purpose of this opinion is to explain this view.
5. This opinion is provided alongside an application for a lawful development certificate² pertaining to the Site ('the LDC Application'). Reference is made to various documents that are provided within that application.

¹ Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 ('the GPDO')

² Pursuant to s.192 of the Town and Country Planning Act 1990

Key Factual Background

6. Appendix 05 of the LDC Application is the Council's acknowledgment letter of the Class Q Application. The letter is dated 6 December 2023, but it says:

Thank you for the above application which was received on 21 November 2023. It has been allocated reference 23/01262/PRA56 which should be quoted on all enquiries relating to this matter. Full details of the application can be found on the Council's website through public access <http://publicaccess.rochdale.gov.uk/online-applications/>. The case officer for the application is Rosalind Gralton.

The Local Planning Authority has 56 days from the date the application was received to decide that either: prior approval is not required; that prior approval is given; or that prior approval is refused. If you have not received any notice from the Local Planning Authority by 16 January 2024 that prior approval is not required, that prior approval is given or that prior approval is refused then prior approval is deemed to be granted.

7. Appendix 07 of the LDC Application is the Council's email to the Applicant's agent, Mr Matthew Benson (from Storah Architecture). It is from Ryan Killeen (principal planning officer) and it had the Council's decision notice attached. The email is time stamped 16 January 2024 20:54.

Law

8. Class Q of the GPDO allows for:

(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 within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; [or]

(b) [development referred to in paragraph (a) together with] building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

9. Class Q.2(1) of the GPDO says (with my **emphasis**):

*(1) Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, **the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—***

(a) transport and highways impacts of the development,

(b) noise impacts of the development,

(c) contamination risks on the site,

(d) flooding risks on the site,

(e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, [...]

(f) the design or external appearance of the building, [and]

[(g) the provision of adequate natural light in all habitable rooms of the dwellinghouses,]

and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

10. Thus, to rely upon Class Q of the GPDO, the prior approval of the Council is required. However, this is subject to paragraph W, which provides as follows:

W.— Procedure for applications for prior approval under Part 3

(1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.

(2) The application must be accompanied by—

(a) a written description of the proposed development, which, in relation to development proposed under Class M, N or Q of this Part, must ...

(11) The development must not begin before the occurrence of one of the following—

(a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or

(c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

(12) The development must be carried out—

(a) where prior approval is required, in accordance with the details approved by the local planning authority;

(b) where prior approval is not required, or where sub-paragraph (11)

(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1),

unless the local planning authority and the developer agree otherwise in writing.

(14) When computing the number of days in sub-paragraph (8)(a), any day which is a public holiday must be disregarded.

11. Accordingly, the requirement for prior approval is caveated by paragraph W(11)(c), which introduces the '56 day rule'. Thus, where the Council fail to provide written notice of their determination by the expiry of 56 days following the date on which the application was received, the development may proceed absent that notice. In effect, the Council's jurisdiction to make a determination as to whether prior approval is required expires after 56 days.

12. Whilst paragraph W(11) refers to written notice, it is clear that electronic service would suffice, given that section 329(1)(cc) of the Town and Country Planning Act 1990 says:

[(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (3A), to that person at that address (subject to subsection (3B)); or]

13. Article 2(9) of the GPDO says:

(9) Where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday or public holiday.

14. Paragraph W(11) of Part 3 of the GPDO refers to, 'the receipt by the applicant from the local authority of a written notice of their determination that such prior approval is not required' and sub-paragraph (b) refers to 'the receipt by the applicant from the local planning authority of a written notice giving their prior approval'. However, sub-paragraph (c) refers to 'the expiry of 56 days following the date on which the application was received by the local planning authority without the authority *notifying the applicant* as to whether prior approval is given or refused'.
15. Sub-paragraph (c) relates to both of these alternative notifications, and (by implication) to the third possibility that the notice served by the authority may be to inform the applicant that prior approval is refused. It therefore seems clear from the context that sub-paragraph (c) must also be taken to refer to the *receipt by the applicant* of such a notice.
16. This interpretation is supported by Martin Goodall A Practical Guide to Permitted Changes of Use Under The General Permitted Development Order [Bath Publishing, 2015]³ and all known appeal decisions dealing with this point to the author. Martin Goodall's book addresses 3 appeal decisions that support this interpretation. I note that the LDC application similarly references an appeal decision⁴ at Appendix O8, which adopts the same approach, whereby the inspector said as follows at paragraph 11:

Whilst I accept that that the Council determined the application on the 56th day and published the decision on its website, I do not consider that this is sufficient to comply with the requirement in W(11) (c) to notify the applicant within 56 days. An e-mail sent on that day

³ See pages 164 – 166 section 15.5

⁴ Appeal Reference: APP/R0660/X/17/3175487

would have sufficed, provided it was actually received by the Appellant or his agent within working hours on the 56th day. However, there is no dispute that the decision notice was postmarked 10th August, and not actually received until 12 August 2016.

Discussion

17. It is clear from the contents of the Council's own acknowledgment letter of the Class Q Application, that they had to provide their notice by 16 January 2024. The Council's notice was not provided until 20:54 on 16 January 2024, plainly outside of business hours. The issue is whether this would fall on the 56th day or, being outside of business hours, it would fall on the 57th day.
18. Given the legal analysis above, it is my firm view that the notice had to be received by the applicant (or his agent) by the 56th day. Article 2(9) of the GPDO makes clear that where electronic communication is received outside of business hours, as occurred here, it is taken that it was received the next working day – being 17 January 2024. Thus, this would fall on the 57th day and thus the 56 day rule would be engaged.
19. It follows that prior approval is not required for development to proceed under Class Q, given that paragraph W(11)(c) of Part 3, Schedule 2 of the GPDO is engaged.
20. I hope that my advice is clear and sufficient for present purposes. If I can assist further, please do not hesitate in contacting me.

Killian Garvey
Kings Chambers
20 March 2024

