

Appeal Decision

Site visit made on 19 November 2014

by Jennifer Tempest BA(Hons) MA PGDip PGCert Cert HE MRTPI IHBC

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

Decision date: 19 December 2014

Appeal Ref: APP/F1230/A/14/2224806

Buckham Mills Farm, Chedington Lane, Chedington, Beaminster, Dorset DT8 3JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr and Mrs R Evans against the decision of West Dorset District Council.
 - The application Ref WD/D/14/001124, dated 1 May 2014, was refused by notice dated 4 July 2014.
 - The development proposed is change of use from agricultural building to a registered nursery.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant raised questions with regard to the publicity given by the Council relating to the application. Clarification was sought from the Council and their response forwarded to the appellant. On the basis of the information available, the Council's site notice appears to have included the correct references to the Act. I also note that the application made to the Council did not include details of any proposed works to the building.
3. The appellant's evidence refers to the listed status of Buckham Mills Farm and states that a number of buildings, including the building which is the subject of this appeal, are not listed. My decision only considers the agricultural building which is the subject of this appeal. The site address is taken from the original application.

Background and Main Issue

4. The Council's response to the application as to whether prior approval was required is set out in their letter of 4 July 2014. This states that prior approval is required and is refused. However, the reason given for refusal is that the proposal is not permitted development and is not subject to the prior approval process because the building is a listed building.
5. Accordingly, the main issue in this appeal is whether the proposal constitutes permitted development under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Reasons

6. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO) permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to use as a state-funded school or a registered nursery. Paragraph MA.1.h states that development is not permitted by Class MA where the building is a listed building.
7. Buckham Mills Farm (the farmhouse) is a Grade II listed building (listed as Buckham Mill). Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that any object or structure within the curtilage of a listed building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948, shall be treated as part of the building.
8. The Council states that the barn lies within the curtilage of the farmhouse and was built before 1 July 1948. At the time of listing it was in the same ownership as Buckham Mills Farm and the barn lies within what would reasonably be considered to be the curtilage and within the area of land to the rear of Buckham Mills Farm maintained as lawn.
9. As this is an application for prior approval, the information required to be submitted is less than that which would be submitted with an application for planning permission. The plan identifying the appeal site shows the appeal building and area immediately to the north and does not show any other land in the same ownership. A plan showing the layout of the existing building was also submitted with the application.
10. The appellant confirms that at the time of listing in 1953 the farmhouse, barn and agricultural buildings were in the same ownership. The appellant purchased Buckham Mills Farm and surrounding land in December 2010 and has since restored the farmhouse. I understand from the appellant's evidence that the farmhouse and agricultural buildings remain in one ownership.
11. The appellant cites a High Court judgement relating to a barn and a listed farmhouse near Wiveliscombe, in Taunton Deane¹ and suggests the findings are applicable to the current appeal. The appellant summarises the case and makes comparisons with the current appeal proposal. I have considered the judgement made. The Taunton Deane case sets out the principle, established in the earlier Calderdale case², that deciding whether or not a building is within the curtilage of another building is a question of fact. Three factors are of particular relevance: the physical 'layout' of the listed building and the structure, their ownership, past and present and their use or function, past and present.
12. In the cited Taunton Deane case the Court was concerned with whether or not the Council could reasonably have come to the conclusion that a barn was not within the curtilage of the farmhouse in 1984 (the date of listing). It was established that at the time of listing the barn and farmhouse were, in all probability, in the same ownership (although the Council had previously

¹ R (on the Application of Thomas Edward Egerton) v Taunton Deane Borough Council; Queen's Bench Division 23 October 2008

² Attorney General ex rel Sutcliffe v Calderdale MBC (1983).

considered this was not the case). The Council had taken into account physical layout and use or function. In terms of physical layout, aerial photographs and an ordnance survey showed that the listed farmhouse and its residential curtilage were both physically separated from and functionally distinct from the agricultural land and building which included the barn. The barn was some 34 metres from the farmhouse and the farmhouse was enclosed on two sides by a wall. The barn in question was found to be part of a group of four buildings which "turns its back" on the farmhouse on the other side of the wall.

13. The agricultural building in the current appeal is positioned at right angles to the farmhouse. At its closest point it is only separated from the farmhouse by approximately the width of a gate. There is no free standing boundary wall separating land associated with the farmhouse from the agricultural building. No evidence has been presented to indicate that different arrangements existed previously. The south wall of the agricultural building is directly adjacent to what is now garden associated with the farmhouse although the garden does not extend along the full length of the building. Whilst the principal access to the agricultural building and access for cattle is from the north side, the south wall of the building includes a door and window, the former presumably allowing easy access into the building from the farmhouse.
14. I observed during my site visit that the building forms part of a close knit group with the farmhouse and I do not share the appellant's opinion that the agricultural building has its own clearly defined curtilage. I consider the layout of the agricultural building and the farmhouse to be markedly different from the relationship of buildings described in the Taunton Deane case.
15. As regards use and function, I saw nothing to suggest that the now vacant agricultural building has been used for anything other than agricultural purposes. There is no substantive evidence before me regarding the historic use of the farmhouse although I observed that it has former stables attached to its southern end. I have noted the remarks made in the Taunton Deane judgement regarding the functional differences between the farmhouse and the agricultural buildings.
16. Notwithstanding that there was a considerable amount of evidence examined in Taunton Deane case, in contrast with the limited evidence put forward with this appeal, I am satisfied that the Taunton Deane case differs significantly from that of the current appeal and is therefore of limited relevance. Given the physical layout of the appeal site and the position regarding ownership past and present, I am not persuaded by the evidence that the Council's decision that the appeal building lies within the curtilage of the listed building was incorrect.
17. The appellant's evidence covers a range of matters pertaining to the site's suitability for the use proposed and the need for such a use. The Council's evidence also addresses some of these matters. However, the Council's reason for refusing the application is restricted to the issue of whether the proposal is capable of benefitting from the provisions of Class MA. I have not considered any of these additional matters as part of my decision as, in order to benefit from the provisions of Schedule 2, Part 3, Class MA of the GPDO, the building which is the subject of the change of use cannot be a listed building.
18. I conclude that the proposed change of use is development for which an application for planning permission is required. An application for planning

permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. Accordingly, the appeal is dismissed.

Jennifer Tempest

INSPECTOR

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