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## Appeal Decision

Site visit made on 5 September 2016

**by Thomas Bristow BA MSc MRTPI**

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

**Decision date: 26 September 2016**

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**Appeal Ref: APP/R3325/W/16/3149710**

**Land at east of Longstrings Lane, Broadshard, Crewkerne, Somerset TA18 7NJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended 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 Brett Jacobs against the decision of South Somerset District Council.
  - The application Ref 15/05725/PAMB, dated 16 December 2015, was refused by notice dated 12 February 2016.
  - The development proposed is the change of use of agricultural structures to 2 dwellings and for associated building operations.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The address in the banner heading above is that given on the appeal form, dated 4 May 2015. On the basis of the information before me this is both accurate and preferential to that used in the original application form, which contains Ordnance Survey coordinates. Likewise it is preferable to the less precise address given in the Council's decision notice.
3. I have employed the description of development in the banner heading in place of that used in the application form, which includes statements regarding the merits of the proposal. This description is also more accurate than that adopted by the Council in their decision notice, which refers to change of use alone, as the proposal also entails building works.<sup>1</sup>
4. The 3 relevant structures to which this appeal relates are identified on the site plan supporting application Ref 15/05725/PAMB (hereafter referred to as the 'current application'). At the time of my site visit what appeared to be a small

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<sup>1</sup> Section 5 of the appellant's planning statement accompanying the original application sets out that the proposed physical alterations are 'the replacement (within existing openings) of windows and doors with more secure units of superior insulation specification'.

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pre-fabricated metal storage container and mobile home were also present nearby, which are unrelated to the development proposed via this appeal.

## **Planning Background**

5. The proposal to which this appeal relates follows unsuccessful application Ref 14/05510/PAMB, which is hereafter referred to as the 'previous application'. Whilst each proposal must be determined on its particular merits, this previous application is relevant in so far as it relates to whether or not the Council determined the current application within 56 days with reference to Schedule 2, Part 3, paragraph W(11)(c) of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the 'GPDO'). Whether the proposal has deemed consent is therefore in dispute.
6. The appellant explains that he received the Council's notice of refusal on 13 February 2016, a period of 59 days from the date on which the application was initially made. However, the appellant paid an associated planning fee to the Council on 23 December 2015, 52 days before notification of refusal was received.
7. In this context the appellant brings various appeal decision to my attention for development elsewhere which he contends indicate that the 56 day statutory period commences from the date on which such an application is received, not from when it is validated. However on the basis of the limited information before me in respect of those appeals, none relate specifically to whether or not the fee is an integral part of an application for prior approval.
8. Schedule 2, Part 3, paragraph W(3) of the GPDO sets out that the local planning authority may '*refuse an application*' where they are of the view that the proposed development does not comply with, or there is insufficient information provided to enable them to determine compliance with, any relevant conditions, limitation or restrictions. Paragraph W(2) sets out that the application must be accompanied by various details '*together with any fee required to be paid*'. Consequently the legislation is clear that in the absence of the required fee an application cannot be said to have been made in the first instance, rather than an 'invalid' application having been made.
9. However the appellant further sets out that the fee was paid only '*in the interests of expediency*', and contends that no fee was required as application Ref 15/05725/PAMB was made within 12 months of application Ref 14/05510/PAMB, with reference to the exemptions in respect of planning fees set out in Regulation 9 of the *Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012* (the 'Fee Regulations').
10. Amongst other requirements, the Fee Regulations establish that a fee is not payable where an application is made within 12 months from the date of the refusal of a previous application which the local planning authority are satisfied

*'relates to development of the same character or description as the development to which the earlier application related...'*<sup>2</sup>

11. There are, however, notable differences between the development proposed via the current and previous application. The previous application sought to change the use of a total of 66.72 square metres of land, the current application relates to a total area of 52 square metres.<sup>3</sup> The previous application also related to a further structure, situated to the northern boundary of the land associated with the appeal site, to which the current application does not relate. Moreover the appellant explains in his appeal statement that *'the previous application was made for MB (a) approval only'*, i.e. for change of use alone under the provisions of former legislation,<sup>4</sup> rather than for both change of use and associated building works as is currently proposed.
12. Therefore whilst similar, the current and previous applications cannot be described as development of the same character or description, and indeed in any event a fee has been paid for the current application based on the Council's position here. Consequently that the fee associated with the current application was paid on 23 December 2015 is significant as the appellant was notified by the Council of refusal 52 days thereafter, within the 56 day period specified within the GPDO. For these reasons, it therefore follows that it is necessary to consider the merits of the proposal in this appeal as the development proposed does not benefit from deemed consent.

### **Main Issues**

13. Development enabled via Class Q of the GPDO is subject to various limitations and conditions. Where development proposed does not comply with the limitations specified in Schedule 2, Part 3, paragraph Q.1, it is not permitted development. Provided that development complies with these limitations, the relevant conditions under Schedule 2, Part 3, paragraph Q.2 must also be complied with.
14. Notwithstanding that their stated reasons for refusal are prefaced with *'the development is not permitted'*, the Council object to the proposal as they are of the view that it has not been demonstrated that the existing structures within the appeal site are lawful, and hence permitted development rights under class Q would not apply *a priori* with reference to the position established in Article 3, paragraph (5) of the GPDO. The Council are furthermore of the view that the proposal is not compliant with either the relevant limitations of paragraph Q.1 or conditions of paragraph Q.2 in certain respects.
15. Therefore on the basis of the evidence before me the main issues in this appeal are:

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<sup>2</sup> Regulation 9, paragraph (2)(c) of the Fee Regulations as reiterated by *Planning Practice Guidance* Reference ID: 22-040-20141017.

<sup>3</sup> As stated in the respective application forms.

<sup>4</sup> Schedule 2, Part 3 of the former *Town and Country Planning (General Permitted Development Order) 1995* as amended by the *Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014*.

- 1) whether or not it has been demonstrated that the existing structures on site and access arrangements are lawful, and if so
- 2) whether or not the proposal would comply with the relevant limitations in paragraph Q.1 of the GPDO, with particular regard to the use of the site on 20 March 2013 and the extent of curtilage proposed, and again if so
- 3) whether or not the conversion would be impractical or undesirable with reference to paragraph Q.2(1)(e) of the GPDO in respect of the effect of the proposal on the character and appearance of the area, and with regard to the living conditions of the intended future occupants of the dwellings proposed.

## Reasons

16. The appeal site is a field bounded in the main by hedgerows and trees. Appearing largely untended, established vegetation covered a significant proportion of the land. Access is via an unconsolidated rubble track running through the appeal site that joins Longstrings Lane to the west, which in turn connects with the A356 close-by. Whilst the land surrounding the appeal site appears to be put to use for grazing livestock, there was nothing at the time of my site visit to indicate that the appeal site is presently in active agricultural use, and its untended nature indicates that this has been the case for some time.
17. The site hosts three modest structures arranged in a row which are proposed to be converted into two dwellings. The easternmost of these structures appears to be a prefabricated timber-clad shed with plastic sheeting for windows which is served by a small area of decking. I note that following a fire the appellant explains that damage to this structure has been recently repaired.<sup>5</sup> There were few visible signs of ageing to this structure, and hence it appears relatively newly created.
18. The westernmost structure is, by contrast, in a very poor state of repair. It comprises a deteriorating timber frame sat on bare earth, with corrugated metal sheeting attached that has rusted with the passage of time. A person could not stand within it on account of its limited height. The structure falling between the easternmost and westernmost structures is again timber framed and covered with profiled metal sheeting. Although larger than the westernmost structure, it is in a comparably poor state of repair with rotten timber and rusted metal sheeting. There is no robust evidence before me in respect of the structural integrity of these structures.<sup>6</sup>

### *Lawfulness of existing structures and access*

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<sup>5</sup> The Devon & Somerset Fire & Rescue Service records indicate that a structure on the appeal site was affected by this fire, and I observed during my site visit that charring to several trees to the rear of this easternmost structure remained.

<sup>6</sup> With reference to *Planning Practice Guidance* Reference ID: 13-105-20150305.

19. The appellant asserts that all development on site is lawful, and that vehicular access to the appeal site is by way of an easement over connecting land. Whilst there is no evidence before me in respect of the access arrangements to the site, this is in essence a private legal matter. Vehicular access to the site is clearly physically possible.
20. However given that I have identified above that the appeal site and surrounding land within the same ownership does not appear to have been actively used for agricultural, or indeed any, purposes for some length of time, it is not readily apparent under what circumstances development on site would have secured consent (if required). Whilst this is not determinative, there is no evidence before me to establish definitively whether the existing structures on the appeal site are lawful, such as a certificate of lawfulness or previous consents from the Council.
21. Similarly whilst the appellant contends that all of these structures would in any event be immune from enforcement action by virtue of being present for more than 4 years,<sup>7</sup> there is no robust evidence before in relation to this statement such as dated evidence related to their construction. Such evidence of existing lawfulness is plainly critical, particularly in relation to the easternmost structure which appears to be of a markedly more recent date of construction compared with the others present.
22. I note the arguments put by the appellant that certain works previously undertaken to existing structures, including to the easternmost structure, may not constitute development. Nevertheless the pertinent matter here is whether or not it has been demonstrated that the structures within the appeal site are in themselves lawful, rather than whether any subsequent alterations undertaken to them amount to development requiring specific consent.
23. I further note the appellant's proposition that the easternmost structure could be removed from the proposal via this appeal. However in my view this element of the proposal is not clearly severable given that the floorspace of structures proposed for conversion and associated curtilage is given collectively in the application form and annotated as such on associated plans. Moreover a condition to this effect, as the appellant has suggested, could not reasonably be imposed given that it would modify the development proposed in such a way as to make it substantially different from that set out in the application; the result would be one rather than two dwellings.<sup>8</sup>
24. Therefore on the basis of the information before me and my site visit observations I cannot conclude that the existing structures on the appeal site are lawful. On this basis, and with reference to the provisions of Article 3, paragraph (5) of the GPDO, I cannot find that the proposal benefits from the permitted rights set out under Class Q. It is consequently unnecessary to consider the other matters in dispute set out as main issues above, as the appeal falls on this basis.

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<sup>7</sup> With reference to the provisions of Section 171B of *The Town and Country Planning Act 1990* as amended.

<sup>8</sup> Reference ID:21a-012-20140306.

### **Other Matters**

25. I note the appellant's correspondence to the Council dated 13 July 2016 expressing concerns over the way in which the Council have administered the application. However these are chiefly procedural concerns rather than matters relating to the merits of the proposal to which this appeal relates. I would further note that I have determined this appeal on the basis of the cases that have been put to me. Consequently this decision neither prevents the appellant from providing further evidence in support of a future proposal, nor prejudices any future decision or enforcement action that may be taken by the Council.

### **Conclusion**

26. For the above reasons, and taking all other matters into account including the various cases, case law and evidence that the appellant has cited, I therefore conclude that it has not been demonstrated that the existing structures on site are lawful. Accordingly the proposal before me is not compliant with the requirements of Article 3, paragraph (5) of the GPDO and should be dismissed.

*Thomas Bristow*

INSPECTOR