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12 November 2010

Our Reference: 991009.1

Ms. A. Jordan
Principal Planning Officer
High Peak Borough Council
Municipal Buildings
Glossop
Derbyshire
SK13 8AF

Dear Ms Jordan

Our Client: Mr Gareth Hardy

Matter: Conversion of Barns and Renovation Works at Meadows Farm, Hayfield

Application References: HPK/2004/1088 and HPK/2009/0749

We are instructed to act on behalf of Mr Hardy in respect of the above property.

Planning permission was granted in 2004 for a two storey side extension to the Farmhouse at the above address and this planning consent was implemented in 2009. A further consent was granted in 2010 for the conversion of outbuildings on the property to form a residential dwelling.

The local authority has acknowledged in e-mail correspondence to our client that the garage which is adjacent to the Farmhouse has an established use as an ancillary residential building within the curtilage of the main property.

As you are aware, our client wished to carry out various repair works to the garage, involving the re-pointing and re-building of two sections of the garage wall (each one metre long) and interior works (which have not yet been commenced) including a new toilet and wash room. The Local Authority agreed that these fell within permitted development rights by virtue of Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

Our client completed the exterior works outlined above to the garage on 19 November 2009 but unfortunately on 26 November 2009 heavy storms blew the roof off of the garage building.

In your e-mail to our client's architect of 22 March 2010 you inform him that Building Control will require an application for Building Regulations Approval because they consider the replacement of the roof, in addition to the other works, to constitute a total rebuild of the garage. On this basis, you informed our client that you consider the works to constitute a rebuild, falling outside of the permitted development rights conferred by Class E of Schedule 2 of the Town and Country Planning (General Permitted development) Order 1995. In our opinion this is not a correct analysis of the law and the

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works that our client has undertaken to date, and now wishes to undertake to the roof, do not constitute a re-build and do not require planning permission.

Firstly, the requirement for Building Regulations Approval is completely independent from the regime which covers the requirement for planning permission and therefore, the decision of the Building Control Department to require consent should not be a factor in deciding whether planning permission is required. An application for Building Regulations Approval is always required where more than 25 percent of the roof is to be repaired or re-covered. This is because the thermal insulation to the roof would normally need to be improved and therefore an application is required to ensure that this meets the necessary requirements.

Secondly, the works to the exterior of the garage building, involving the re-pointing and re-building of small sections of the wall were completed one week before the roof blew off and, as this took place approximately one year ago, these works should now be regarded as separate from the proposed works to the roof.

Thirdly, we should point out that the majority of the structure, together with the interior, of the building has remained completely intact throughout the duration of the works to the exterior of the garage building, and will still remain in place when the roof is replaced. As such, the exterior works cannot be regarded as a re-build of the original structure of the garage.

Fourthly, the works to the exterior (both those that have been carried out and the replacement of the roof) fall within the exemption under Section 55(2) of the Town and Country Planning Act 1990. Section 55 of the 1990 Act states that "development" means "the carrying out of building, engineering, mining or other operations, in, on, over or under land, or the making of any material change in the use of any buildings or other land". Section 55(2) then states that works for the maintenance, improvement or other alteration of any building which do not affect the external appearance of the building shall not constitute "development".

The commentary in the Encyclopedia of Planning Law states that the test of "to materially affect" raises issues of a subjective and aesthetic nature. In the case of *Burroughs Day v. Bristol City Council* [1996] 1 P.L.R. 78; [1996] 1 E.G.L.R. 167 the court held that the provision of a lift shaft housing, which involved alteration to the roof and replacement of windows to the front elevation of the listed building did not constitute development. The court held that it was not sufficient merely that works should affect the exterior of the building: the test was that they should materially affect the "external appearance", and this implied that the change must be visible from a number of normal vantage points: visibility from the air, or from a single building, would not be sufficient. The change in external appearance had to be judged for its materiality in relation to the building as a whole and not by reference to a part of the building taken in isolation.

The commentary then continues to state that the exemption under section 55(2) does "fall short of conferring unlimited rights to rebuild dilapidated or destroyed buildings". It states that "the dividing line between alteration and rebuilding may often be a matter of degree". This clearly implies that a substantial amount of work may be done before works amount to a rebuild.

In *Larkin v. Basildon District Council* [1980] J.P.L. 407 the appellant had rebuilt all four external walls. The court upheld an enforcement notice requiring him to demolish all the external walls, accepting the Secretary of State's view that the original building had virtually ceased to exist. Thus the works were not within s.55(2)(a) of the Act because they constituted the construction of a new dwelling.

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Similar examples of case law at appeal level have all produced consistent decisions, to the effect that works must be very extensive, probably involving the replacement of all of the walls and the majority of the structure and fabric of the building, such that the identity of the original building has been lost and / or the external appearance has materially changed, in order to fall outside of s.55(2) (a) and Class E.

For example, in the case of *Havering L.B.* 16/9/92 (DCS No.045-407-486) action was taken against an agricultural building allegedly erected without permission. The appellant claimed that the building was an existing one which had been renovated, and the works were no more than repair and maintenance. An inspector observed that the only areas of the original brickwork that were replaced were where this was in such a poor condition that it needed replacing to provide support for the roof. The major part of the original fabric had remained and the building had not materially altered in height or floor area. He noted that the appearance of the building had beneficially changed because of a new red tiled roof, and because the building was subsequently painted white. The notice was quashed.

In another case, enforcement action was taken with regard to building works to a former derelict cottage. An inspector felt that in order for works to be considered to be works for maintenance, improvement or other alterations, sufficient of the fabric of a building had to remain in order that the identity of the original building was not lost and that there was enough of it left to alter or improve. What had taken place in this case had gone far beyond this (*South Pembrokeshire D.C.* 8/8/96 DCS No.031-623-284).

The case law and commentary on this point illustrate that as long as the original building is not being replaced, the works will fall within the definition of alterations, improvement and maintenance. As mentioned above, the majority of the structure and fabric of the building, including the foundations, the interior and the majority of the walls (with the exception of the 2 metres that were re-built) has remained untouched. In addition, the external appearance of the garage roof will not change as part of the proposed replacement, as the size will remain the same and the materials will be an exact match. Therefore, it is therefore clearly not the case that the replacement of the roof constitutes a rebuild of the whole of the garage.

Finally, in addition to the fact that the works to the garage do not constitute "development" under s.55 of the Act, our client benefits from the deemed permission granted by Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. Your e-mail of 22 March to our client's architect states that planning consent is required because the works will be over 2.5 metres high within 2 metres of the boundary of the domestic curtilage.

However, as the works do not constitute the new provision of a building within the curtilage of the dwellinghouse, the exceptions to the permitted development rights conferred under Class E do not apply. As discussed above, the works to the garage involve the maintenance, repair or alteration and as such the limitations under class E relating to the total area of the curtilage, height of the garage, and distance from the boundary etc are irrelevant. These only apply to the development of a completely new outbuilding within the curtilage of the dwellinghouse, which is not the case here.

Further, in analysing the provisions of Class E it is helpful to look at the provisions of Class C of Schedule 2, Part 1 of the GPDO 1995, which allows for any alteration to the roof of a dwellinghouse. The commentary to this section in the Encyclopedia of Planning Law states that it is intended that this provision "should allow the replacement of a roof irrespective of the materials used (replacement using original or similar materials would normally not constitute development at all by virtue of s.55(2)(a)), and the insertion of roof lights...". This clearly indicates that the replacement of an entire roof on a

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dwelling house would not constitute "development" under s.55(2)(a) and would also be permitted under Class C. It would be hard to imagine that the application of the both Section 55 of the TCPA 1990 and the Class E of the GPDO 1995 results in the provisions relating to new roofs on outbuildings being more stringent than those applicable to the main dwellinghouse.

Therefore, in conclusion it is clear that both Section 55(2) of the TCPA 1990 and the permitted development rights conferred under Class E apply in this case and our client's works amount to alterations, repairs and improvements, rather than a rebuild of the entire fabric and structure of the garage.

We therefore request that you provide written confirmation as soon as possible that our client's proposed works to the roof do not require planning consent so that our client can continue with the repairs as soon as possible.

Please do not hesitate to contact us if you have any queries.

Yours sincerely

Lucy Miles
Miles Planning Solicitors