Dear Mr Bryant

Thank you for your enquiry as to whether your proposals to instal solar panels on three non-domestic buildings are permitted development under GPDO 2015 Schedule 2, Part 14, Class J.

For brevity I will call these three buildings 'the subject buildings'.

I have not seen the site, and I have relied on the briefing you have provided and on public sources like the National Heritage List for England and Google maps.

GPDO 2015 Schedule 2, Part 14, Class J

I will not spell out Class J in full, and I assume the proposals comply with it in other respects, but the local planning authority (LPA) is correct in saying that Class J would not apply if:

> "(f) the solar PV equipment or solar thermal equipment would be installed on a listed building or on a building within the curtilage of a listed building."

The key questions are thus:

Q (i) whether the subject buildings are listed, or covered by listing;
and if they are not
Q (ii) whether they are in the curtilage of a listed building.

At least a quarter of all the member enquiries I get at the CLA relate to whether particular buildings are covered by listing, so I have made a detailed study of these questions over more than 15 years, including the legislation and case law, published books and advice, and other sources.

The listed buildings

As background, the subject buildings on which you wish to place solar panels are not themselves listed, but there are four listed buildings in the wider area:

- Stowford Manor, listed Grade II* in 1962, in residential use then and since.

- Stable and coach house, listed Grade II in 1988, then and now in an ancillary-to-domestic use relating to Stowford Manor.

- The Mill, listed Grade II in 1962, once a mill, since 1991 workshops, studios, storage.

- The Mill house and cottage, listed Grade II in 1962, both residential, once ancillary to the Mill.

Q (i) Are any of the buildings on which you wish to place solar panels listed, or covered by listing?

As above, the subject buildings are not themselves listed.

They could in principle be covered by the listing of one or more of the four listed buildings, but to be so covered the Planning (Listed Buildings etc) Act 1990 and case law would require them to be:

(a) in the same ownership as the listed building(s) at the date of listing

I understand that they 'pass' that test.

(b) and built pre-1948

The Dutch barn lean-to is I understand post-1948 and 'fails' that test, so therefore cannot be covered by listing, but the others are pre-1948, so potentially could be.

(c) and ancillary to the listed building(s) at the date of listing

This is often the decisive question in practice. If a structure was not ancillary to the listed building(s) at the date of listing, then – curtilage or not – it will not be covered by listing. That has been clear at least since the *Debenhams* case in the House of Lords in 1987, and has been reconfirmed in many other cases since then, for example *Watts* [1991], *Richardson* [1999], *Morris* [2003], *Egerton* [2008], and recently *Blackbushe Airport* in the Court of Appeal in 2021 ("in order to be treated as if it were part of the listed building, a freestanding structure within the curtilage must also be ancillary to that building").

Here the subject buildings were in agricultural or agriculture-related uses when the listed buildings were listed. In contrast, the listed buildings as above were a house, a stable/coach house ancillary to the house, a mill, and residential accommodation. None of the listed buildings therefore was agricultural, so the subject buildings will not have been ancillary to them. Both the *Morris* and *Egerton* cases as above directly addressed whether the listing of a house or a farmhouse also 'lists' surrounding buildings in agricultural use, and concluded that it does not. The subject buildings would only be ancillary to the listed buildings if they had been in a use ancillary to the domestic (or mill) uses of the listed buildings, like perhaps domestic (or mill) storage, or the gardener's (or millworker's) cottage.

(d) and in the curtilage of the listed buildings at the date of listing

As above, if the subject buildings are not ancillary to the listed building(s) they cannot be covered by their listing, even if they were/are in the curtilage(s). Whether they were in fact in the curtilage(s) is discussed below in Question (ii).

Conclusion – listing

In conclusion, none of the subject buildings are themselves listed, the Dutch Barn lean-to cannot be covered by the listing of the listed buildings because it is post-

1948, and the remaining subject buildings won't be covered by the listings because they were (and are) not ancillary to the listed buildings.

Q (ii) Whether any of the subject buildings are in the curtilage of the listed building(s)

Firstly, the LPA is correct to say that the other buildings north of the A366 on which you wish to place solar panels are not in the curtilage of any of the listed buildings, because they are separated from them by a wholly different use, a public highway (see *James v SoS*, 1991).

The LPA is, I understand, uncertain about the subject buildings to the south of the public highway.

The meaning of 'curtilage' has been reviewed in a succession of cases, for example *Sinclair-Lockhart*, *Dyer*, *Skerritts*, and recently *Blackbushe Airport*. To be in the curtilage of a building, land or a structure must be 'so intimately associated' that it forms 'part and parcel' of the building 'to which it is related', serving that building in some 'useful but nevertheless subservient way'. These 'tests' for curtilage are not identical to the tests for 'ancillaryness', but they do overlap heavily. It is possible for land to be ancillary but not in the curtilage (as it was in *James v SoS*), but the requirements for 'intimate association', and to be 'serving the [listed] building' 'in a… subservient way', make it unlikely that a building which is not ancillary will be in the curtilage.

Here as above the subject buildings, being in a different, agricultural, use, are very unlikely to meet these curtilage 'tests'. Again, the *Morris* and *Egerton* cases above strongly suggest that agricultural uses will not be in the curtilage of residential (or mill) buildings.

The subject buildings are also separated from the listed buildings by private roadways, walls, or other boundaries. That separation might not be as important if the uses were the same on either side of the roadways or boundaries, but here the uses are clearly different, so physical separation is an additional factor suggesting that they are not in the curtilage of the listed buildings.

Conclusion – curtilage

It seems about as clear as it is possible to be in curtilage cases that the subject buildings are not in the curtilage of the listed buildings.

Conclusion: GPDO 2015 Schedule 2, Part 14, Class J

As above, the subject buildings are not listed, and it is very unlikely that they are covered by listing, or in the curtilage of listed building(s). Therefore, provided the proposals comply otherwise, you should be able to use GPDO 2015 Schedule 2,

Part 14, Class J.

As usual in such cases, it is a good idea to apply for a certificate of lawful development to that effect, as I understand you have done (and the local authority is required to grant that certificate if the proposals are compliant with the conditions in the GPDO).

If you have any further questions, please let me know.

Regards

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