
Appeal Decision

Site visit made on 5 September 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 21 September 2016

Appeal Ref: APP/R1010/W/16/3149755

Hickingwood Farm Yard and Barn, Hickinwood Lane, Clowne, Chesterfield S43 4AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class R of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Shaun Drury on behalf of Hunts Contractors Limited against the decision of Bolsover District Council.
 - The application Ref 15/00647/DETGPD, dated 18 December 2015, was refused by notice dated 9 February 2016.
 - The development proposed is "notification of prior approval for change of use of an agricultural building to commercial (B1) use".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development provided in the application form has been updated in subsequent documents. The description of development provided in the appeal form is precise with respect to the proposal before me and I adopt it accordingly.
3. The appellant submitted an application for prior approval under Schedule 2, Part 3, Class R of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for change of use of the building to a commercial use. Class R of the GPDO, subject to specific requirements and restrictions, permits the change of use of agricultural buildings and any land within its curtilage to a flexible use falling within a number of use classes, including uses falling within Class B1 (business)¹ for which prior approval is sought. The change of use permitted by Class R is to a sui generis use and it does not allow any associated operational development.
4. There is no dispute that the current proposal meets the requirements of Schedule 2, Part 3, Class R, paragraphs R.1 (b) to (e) of the GPDO. However, the Council refused the application for prior approval because it considered that the proposal would not accord with paragraph R.1 (a) due to insufficient information to conclude that the building was in use for agricultural purposes as part of an established agricultural unit on 3 July 2012 or that the last use of the building was an agricultural use as part of an established agricultural unit.

¹ As defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)

5. The floorspace of the building exceeds 150 sq.m. If the proposal is considered to be permitted development, a determination is necessary under paragraph R.3 (1) (b) as to whether prior approval will be required as to (i) transport and highways impacts of the development; (ii) noise impacts of the development; (iii) contamination risks on the site; and (iv) flooding risks on the site.

Main Issues

6. The main issues are:

- Whether the proposal would be permitted development in respect of Class R of the GPDO, subject to the prior approval of certain matters.
- If so, whether or not prior approval is required having regard to the assessment of transport and highways impacts of the development, noise impacts of the development, contamination risks on the site and flooding risks on the site.

Reasons

Whether the proposal would be permitted development

7. 'Agriculture' as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended), amongst other things, includes horticulture, fruit growing, seed growing, the breeding and keeping of livestock and the use of land as grazing land. Schedule 2, Part 3, paragraph X of the GPDO further sets out that for the purposes of Part 3 permitted development rights, 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, and 'agricultural use' refers to such uses.
8. Compliance with Class R, Paragraph R.1 (a) requires that the building was solely used for an agricultural use as part of an established agricultural unit on 3 July 2012 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use. Schedule 2, Part 3, paragraph X of the GPDO sets out that an 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture for the purpose of Class R, on or before 3 July 2012 or for 10 years before the date the development begins.
9. The rectangular single storey pitched roof building is constructed on blockwork and corrugated sheeting and is currently vacant with a small yard and access that are partially overgrown. Based on the evidence before me, the building and its associated curtilage, which comprises the appeal site, was formerly part of a larger farm comprising an established agricultural unit. This included an adjacent former farmhouse and outbuildings that are now used as a boarding kennels and cattery, together with agricultural fields that have been in separate ownership since at least 21 September 2011. It is evident that the building and the site has not been used in connection with the adjacent agricultural land in the intervening period and has been subdivided from it since 2011.
10. Representations from nearby residents suggest that the building had not been used for agricultural uses for a significant period of time and had been most recently used for non-agricultural purposes. This includes suggestions that the previous owner operated a storage and distribution business and that the building had been used as an unauthorised wood yard and for storage purposes

in connection with non-agricultural uses. However, there is no substantiated evidence to support these claims. The Council investigated a complaint in 2013 relating to a non-agricultural use, but were unable to gain entry and considered the alleged use of the site to have ceased.

11. The appellant has provided evidence that identifies a previous use of the building for agricultural purposes and that it has been vacant since May 2015. In addition, correspondence from the previous owner of the building states that historically it was used for agricultural purposes and following the sale of adjoining agricultural land on 21 September 2011 was in use for the storage of redundant agricultural conveyor belts and fertilizers. This includes on and after 2 July 2012 and prior to the purchase of the building by the appellant on 14 January 2016. However, there is no substantiated evidence relating to the intervening use of the building and associated land following the subdivision of the adjoining fields on 21 September 2011. The stated storage use taking place on the 3 July 2012 includes agricultural equipment and materials. Nevertheless, such storage could be considered to consist of a mixed agricultural/domestic storage use after 21 September 2011 in the absence of evidence of an association to an established agricultural unit.
12. With regard to the above, the appellant refers to the previous owner having moved to Woodland Grove Farm. However, there is no evidence before me relating to the existing uses at Woodland Grove Farm or any association of the existing building to an agricultural use at that location or any other location after 21 September 2011. The evidence provided, therefore, does not demonstrate that the building was used solely for an agricultural use as part of an established agricultural unit on 3 July 2012.
13. Having taken all of the above into account, I cannot conclude from the evidence before me that the building was in use as part of an established agricultural unit on the 3 July 2012 or remained unused on that date, so that its last use prior to 3 July 2012 was solely for an agricultural use as part of an established agricultural unit. I therefore must conclude that the change of use would not satisfy the requirements of Schedule 2, Part 3, Class R, paragraph R.1 (a) of the GPDO and therefore is not development permitted by it.

Prior approval

14. Given my conclusion that the change of use would not be development permitted under Schedule 2, Part 3, Class R of the GPDO, there is no need for me to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

15. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class R of the GPDO. Consequently, it is development for which an application for planning permission would be required. This 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 previously. The appeal is, therefore, dismissed.

Gareth Wildgoose

INSPECTOR