
Appeal Decision

Hearing held on 28 September 2016

Site visit made on 28 September 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 12 October 2016

Appeal Ref: APP/J1915/W/16/3144930

Crouchfield Farm, Wadesmill Road, Chapmore End, Ware, Herts SG12 0RX

- 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 Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr David Peters, Crouchfield Farm against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/2474/ARPN, dated 10 December 2015, was refused by notice dated 2 February 2016.
 - The development proposed is described as the change of use of agricultural building to a dwellinghouse (1 x 2 bedroom dwelling).
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr David Peters against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary matters

3. In the interests of clarity I have adopted the description of the application in the Council's decision notice.
4. In July 2016 the Council sought permission to challenge a recent appeal decision¹ to allow the conversion of an agricultural barn to one dwelling in the district under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Court's decision is believed to be imminent, and if the matter proceeds to a full hearing, a decision to allow this appeal could be joined to that case, causing unnecessary delay and expense to the appellant. I was therefore asked by the Council to delay my decision until the final outcome of the challenge is known. However, the appellant is entitled to a decision without delay, and given the decision in this case, the matter does not arise.
5. In late 2015 the appellant sought prior approval under Class Q for the change of use of an adjacent building (known as building 29) to a dwelling. The Council sought to refuse approval but accept that the appellant did not receive the notification within the required 56 days. As such, the Council accept that

¹ Appeal Ref APP/J1915/W/16/3142497 dated 20 June 2016.

prior approval for the conversion of building 29 has been granted by default. During the site visit it was established that the combined floorspace of buildings 29 and 30 would not exceed the 450 m² cumulative limit which can change use within an established agricultural unit under Class Q.

6. The application is for prior approval for permitted development under Class Q(b) as well as Class Q(a), namely building operations to convert the building as well as the change of use of the building.

Main Issues

7. There is no dispute that the proposal would meet all the requirements listed in paragraphs Q.1(b) to Q.1(m) of the 2015 Order for permitted development under Class Q. In addition, there is no dispute that prior approval is not required for matters (a) to (d) and (f) in paragraph Q.2 (1) of the Order.
8. Consequently, the main issues in this case are:
 - whether the building was used solely for an agricultural use as part of an agricultural holding on 20 March 2013 or when last in use; and if so
 - whether the location or siting of the building makes it impractical or undesirable for the building to change to use as a dwelling;

in order to establish whether the requirements in paragraphs Q.1(a) and Q.2(1)(e) of the Order would also be met so that the proposal would be permitted development under Class Q.

Reasons

Agricultural use

9. The building which is the subject of this appeal, known as building 30, forms one of three buildings and an associated yard at the centre of Crouchfield Farm, an established agricultural holding comprising about 15 acres which has been in the ownership of the appellant for some 30 years. Over this time a cattle enterprise has been built up, with a corral on the site for 200-300 cattle together with a log cabin for the stockman. The corral is used over the winter, with the cattle grazed in the summer on about 260 acres of nearby farmland.
10. The appellant submitted three statutory declarations claiming that building 30 has been in continuous agricultural use for 30 years. Mr Peters' declaration states that it has housed cattle which have required to be separated from the main herd, calving pens and storage of hay, straw, feeds and equipment. That of Mr Sams, a longstanding employee, states that it has been in use as calving pens, later as a feed store and recently for the storage of farm equipment.
11. However, the planning history of the site is complex. As the appellant states in his statement in support of the current application, there is also a lawful non-agricultural commercial yard. The appellant's case at the hearing was that this commercial yard comprised only the third building, known as building 25, sited on the far side of building 29, together with the yard between buildings 29 and 25. It was argued that the remainder of the site, including buildings 29 and 30, have remained solely in agricultural use throughout.
12. In late 1991, during the appellant's ownership, planning permission was sought for the use of buildings 29 and 30 for storage (B8) purposes together with the

use of adjacent land for the storage of contractor's plant and an alteration to the site access. This was refused and enforcement notices were also served alleging, inter alia, that building 30² was being used for non-agricultural storage without permission. Dealing in early 1993 with an appeal against the relevant notice on the grounds that the alleged use had not occurred, the Inspector found that the building 'is being used for storage purposes' and that 'as a matter of fact, the allegation contained in the notice... has taken place.'³

13. In the case of the related Section 78 appeal, the Inspector concluded that the two buildings were 'genuinely redundant as farm buildings' and that 'low-key storage activities' would be 'a suitable after use for these otherwise underemployed solid structures'. Planning permission was granted for storage use of the two buildings (but not the adjacent open yard) subject to conditions, one of which required unspecified changes to the site access prior to the change of use of building 29. The appellant claims that this permission was not implemented at the time and was allowed to lapse, but this conflicts with the conclusion of the Inspector that the storage use of building 30 had already commenced. The appellant claims that because the site access was not changed and the conditions were not 'signed off' by the Council, the permission did not come into effect and has therefore lapsed. However, the access condition related to building 29 not 30, and consequently there was nothing to stop the continued lawful use of building 30 for storage even though the access was not improved.
14. Subsequently, in early 2001, a planning inquiry was held into a further enforcement notice on the site and a refusal of planning permission for four houses on the site of the three buildings and adjacent yard⁴. The notice alleged that the three buildings, adjacent yard and parts of nearby fields were being used for the storage of building materials, contractors plant, machinery and vehicles without planning permission. The appellant's case in response was, inter alia, that the use of buildings 29 and 30 for storage purposes was not in breach of planning control as planning permission had been granted for the use in 1993 on appeal. It was not claimed that the buildings were not in storage use, rather that the storage use was lawful. The enforcement notice was amended accordingly. Significantly, the appellant, who gave evidence personally and was professionally represented, did not claim that the building was in agricultural use at the time.
15. The appellant was also successful in arguing that the use of building 25 and the yard between buildings 25 and 29 for storage had been ongoing for at least 10 years and was therefore immune from enforcement action. The enforcement notice was amended to take account of this finding too. This area consequently has a lawful use for non-agricultural storage and at the hearing the appellant maintained that this was the only area used for such purposes. It was claimed that the remaining area, including buildings 29 and 30, has been used solely for agricultural purposes for 30 years, and that the 1993 permission was not implemented. It was not suggested or explained that there had been a return to agricultural use at any stage following a storage use of the buildings.

² The notice stated building 29 but this was corrected.

³ Appeal decisions T/APP/C/92/J1915/622178-80 and T/APP/J1915/A/92/208868/P6 dated 17 February 1993.

⁴ Appeal decisions APP/J1915/C/00/1049096 and APP/J1915/A/01/1057049 dated 8 May 2001.

16. The statutory declarations claiming that building 30 has consistently been in agricultural use throughout this period conflict with the planning history set out above. Mr Peters' claim that he was unaware until recently of the 1993 planning permission for storage use of building 30 is also surprising given his close involvement in the 2001 inquiry. In the circumstances I agree with the Council that the statutory declarations are not completely reliable as evidence.
17. It was clear from my site inspection that the three buildings and the yards in between are used for the storage of a wide variety of machinery, vehicles and materials. These include several tractors, earth moving machinery, old cars and a JCB. Buildings 29 and 30 both contain vehicle workshop facilities. Local residents suggested at the hearing that the amount of machinery and equipment on the site was excessive in relation to the size of the agricultural unit, and they noticed numerous vehicle movements to and from the site. One suggested that a plant hire business was being operated, and this was not denied. Residents also observed that in recent years the number of cattle kept within the corral had reduced markedly, and on my site visit I noticed it was rather overgrown. I was advised that there were no cattle on the holding at present, but that cattle would be purchased shortly.
18. There is at present no clear distinction between the types of storage within the three buildings or the yards outside, nor the uses to which these areas are put. Unlike the others, building 30 is subdivided into five bays, the first of which comprises an office. These subdivisions limit the size of the individual items that can be stored, but contrary to the appellant's claim, do not necessarily restrict the use of the building to agricultural storage. There are the remains of two or three hay feeders and an old water trough within building 30, but this is consistent with agricultural use pre-1993.
19. The use of building 30 on 20 March 2013 is a question of fact to be determined on the evidence available. The building must have been solely, not partly, in agricultural use for the permitted development rights under Class Q to be available. The appellant does not dispute that there is a commercial business operating within the agricultural unit, but maintains this has only taken place within building 25 and the yard outside, not in building 30. On the evidence available I conclude that this is unlikely. There is clear evidence of non-agricultural B8 storage use within building 30 in 1993 and 2001, no evidence that the building has since been returned to a solely agricultural use, and on the basis of my site inspection, no evidence that the agricultural and commercial uses within the site are in practice kept distinct and separate.
20. The appellant argues that business rates have not been paid on building 30 over the years and that this demonstrates an agricultural use. However, this may have been an oversight and is not conclusive. Secondly, the Council did not dispute an agricultural use in the case of building 29, but the full planning history of the site only came to light subsequently and the Council could not therefore take it into account in that decision.
21. For these reasons I conclude on the evidence that building 30 was not used solely for an agricultural use as part of an agricultural holding on 20 March 2013 or when last in use. The permitted development rights under Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 therefore do not apply.

Impractical or undesirable location

22. In view of the conclusion in paragraph 21 this issue does not need to be addressed in this appeal decision.

Conclusion

23. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

William Ashley	Agent
David Peters	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham-Paul	Barrister, Francis Taylor Building
Michael Chalk	Planning Officer, East Herts DC

INTERESTED PERSONS:

Joan Walkom	Local resident
Shirley Shurety	Local resident
Ann Cheyne	Local resident