



Appeal Decision

Site visit made on 17 October 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 20th October 2016

Appeal Ref: APP/F2605/W/16/3155872

Mulberry Lodge Nursery, Land at Manor Farm Lane, Hoe, Norfolk NR20 4FP

- 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 (as amended).
 - The appeal is made by Mr Nigel Hubbard against the decision of Breckland District Council.
 - The application Ref 3PN/2016/0029/UC, dated 12 April 2016, was refused by notice dated 2 June 2016.
 - The development proposed is the change of use from an agricultural building to a residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development does not specify whether the application for prior approval was made pursuant to Class Q (a) or Class Q (a) and (b) of Schedule 2 Part 3 of the GPDO¹. Having considered the submissions it is clear that some building operations are proposed. I have therefore considered the appeal as an application for prior approval pursuant to Class Q (a) and (b).

Background and Main Issue

3. Schedule 2, Part 3, Class Q of the GPDO permits the change of use of an agricultural building to a dwelling house subject to limitations and conditions. It is common ground between the appellant and Council that on the 20 March 2013 the appeal building was in an agricultural use (including horticulture) when applying the definition in s336 of The Town and Country Planning Act 1990. Nevertheless, the Council are not satisfied that the building is, or was, an 'agricultural building' when applying the more restrictive definition in Part 3 Paragraph X of the GPDO.
4. The Council has not indicated that it has any other concerns with the proposal including those matters which require its prior approval under Paragraph Q.2.
5. As such, the main issue in this appeal is whether the appeal building benefits from the relevant permitted development rights, with particular reference to the limitations in Paragraph Q.1(a). In effect, whether the appeal building met the relevant definition of an 'agricultural building' on the 20 March 2013.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Reasons

6. Part 3 Paragraph X of the GPDO defines an 'agricultural building' as a 'building used for agriculture and which is so used for the purposes of a trade or business'. The GPDO does not define at what point an agricultural activity, including horticulture, becomes a trade or business. As such, whether or not the appeal building was an 'agricultural building' on the 20 March 2013, as defined by the GPDO, is a matter of fact and degree based on the particular merits of the case and the evidence presented.
7. To support his contention that the appeal building is, and has been, used in support of a trade or business, the appellant has submitted a report prepared in 2010 by Acorus Rural Property Services. This report explains how the appellant intended to set up a horticultural business at the appeal site by selling plants, in particular trees, to local plant nurseries. The report explains that the appellant's wife has a keen interest in horticulture and completed a Horticultural Course at Easton College. It also states that between 2007 and 2010 the site was fenced, including a deer proof 'grow on' compound, a borehole sunk, electricity connected and the appeal building constructed. Subsequently, two polytunnels have been erected at the appeal site. Mr and Mrs Hubbard also attended Business Link courses and undertook market research. These factors would suggest there was, at some point, a genuine intent to start a business at the appeal site.
8. Nevertheless, I am not satisfied that a business has ever got off the ground or that the activities at the site have gone beyond an interest/hobby. The level of activity at the appeal site is at a very small scale. During my visit I observed that the number of plants growing in the polytunnels are not of a commercial scale, such as that set out in the Acorus report. Moreover, there were very few pots, bedding trays or supports, only a small amount of compost and a general absence of the paraphernalia that could be expected from a commercial enterprise. Furthermore, there was nothing like the scale of equipment indicated in Appendix 1 of the 2010 Acorus report. Nothing has been submitted to suggest this is a materially different set of circumstances to those that would have been extant on the 20 March 2013.
9. Additionally, many of the plants were immature with some being saplings that would have been planted recently. The polytunnels were not full and the area given over to growing plants from cuttings, which was identified in the 2010 Acorus report as being an important part of any business, amounted to a small bed. Plants were not being grown externally and the 'grown on' area is a grass paddock devoid of trees or plants. The paddock on the eastern side of the rail line had no evident horticultural activity. In my view, the scale of activity at the appeal site is more akin to an interest, recreation or hobby rather than a commercial enterprise. Such a finding is supported by the observations of the Parish Council.
10. Additionally, I have not been presented with evidence of any business marketing and there was no signage at the appeal site. More significantly, whilst the appellant has submitted receipts indicating that he has purchased plants and equipment in association with the activity at the appeal site, I have not been presented with any substantive evidence that sales have occurred. This is significant, as the horticultural activity has been in situ for a considerable time. In this instance the lack of any evidence of sales is noteworthy and strongly suggests there is not currently a business operating from the appeal site and that there was not a business in operation on or before the 20 March 2013.

11. The appellant has suggested that the presence of a business name (Mulberry Lodge Nursery) and accounts, prepared by an accountant, is evidence that there is a business being operated from the appeal site. Whilst there may be a business name, I am not satisfied there is a commercial operation at the appeal site. Therefore, this is not sufficient evidence to demonstrate the activity at the appeal site, or within the appeal building, meets the necessary GPDO definition, which would confer permitted development rights and facilitate the proposal.
12. Full certified accounts have not been submitted but a profit and loss summary for each year dating back to 2011 has been. This demonstrates that the 'turnover' and gross profit has always been very low, being in the hundreds. It is unclear what this turn over relates to or whether it even arises from activity associated with the appeal site. What is clear is that a substantial loss at a consistent level into the thousands has been made every year. This would suggest the activity is not being operated with the aims of making a profit.
13. I do not share the view of the appellant that the mere occurrence of 'turnover' indicates the presence of a business. In my view, the size of the turnover and any loss is material in ascertaining whether a trade or business is in situ. This is because for an activity to be a business there must be a genuine intention to make a net profit. But I have seen no substantive evidence of such an intention in the past or into the future, such as a realistic forecast, an indication that the scale of activity would increase above the current diminutive scale or that a material level of sales would be made. This is especially so as the activity at the site is nowhere near the scale of activity and level of profit suggested for 'Year 3' in the 2010 Acorus report.
14. In coming to this view, I note that it is not uncommon for a business to make a loss in its first few years whilst it is trying to become established. However, the activity at the appeal site has been in situ for a significant period of time. There is no substantive evidence to suggest the scale has increased or that the activity has ever been close to making a net profit. As such, it would be inaccurate to suggest that on 20 March 2013, the activity at the appeal site was a business in its early stages. The evidence would suggest that the activity was at the same recreational level that it currently is.
15. I accept that in some instances an activity can still amount to a trade or business even if there is little profit and that an activity can be a trade or business even if it is not possible for someone to earn their entire living from it. Nevertheless, the very limited turnover and substantial losses are important material considerations in ascertaining whether the activity is a trade or business. In my view, the lengthy period of time since the activity on site commenced, alongside the significant losses recorded since 2011 and the limited scale since inception would suggest that the activity at the site is a subsidised hobby/recreation rather than a genuine trade or business.
16. I consider there is a clear distinction between a hobby use and a trade or business. A hobby is usually pursued as an interest for pleasure and not as an occupation and often at a financial cost to an individual. Whilst the running of a business on the other hand will have the motivation of making a profit and will contribute to a person's ability to earn a living. From what I have seen and read, the latter does not apply in this instance. Therefore, I am not persuaded the activity at the appeal site is, or has been, anything more than a hobby pursued to support the appellant's interest in horticulture.

17. The appellant has suggested that the receipt of payments from the Rural Payments Agency between 2010 and 2014 under the Single Payment Scheme is evidence that there was a trade or business operated from the appeal site. Whilst the payments were made to a named business, it does not necessarily follow that there is, or was, a business activity at the appeal site because, as already stated, this is a matter of fact and degree based on a number of factors. I do not consider there is a business at the appeal site for the reasons already outlined and therefore the payments are not determinative. Moreover, due to the very limited scale of the payments, I do not consider they alone are sufficient in demonstrating that a trade or business is, or was, operating from the site.
18. My attention has been drawn to an appeal decision (APP/G5180/W/16/3144487) in which a hay cropping activity was found to be a trade or business. The enterprise in question was 52.6 hectares in size with a third of the area devoted to hay. Evidence was provided that the hay was sold. As such, the scale of the activity was not insignificant and clearly involved sales and thus business activity. As such, it constituted a trade or business. Consequently, the associated building was an 'agricultural building' for the purposes of Class Q.
19. This is unlike the activity at the appeal site where the majority of the site is mown grass or very low scale horticulture with no substantive evidence of a commercial purpose underpinning the activity. Consequently, the tractor, toppler and paraphernalia stored within the appeal building are likely to be used for general maintenance of the site and in connection with the appellant's horticultural hobby. These uses are unconnected to a genuine trade or business, as there is insufficient evidence one currently exists.
20. It may be that the current recreational activity at the site could evolve into a bona fide business at a later date. However, I find that the current activity at the site cannot reasonably be described as a trade or business, being more akin to a recreation. The evidence before me suggests this was the situation on or before the 20 March 2013. As such, the appeal building is not an agricultural building for the purposes of Class Q of the GPDO.
21. In conclusion, in order to benefit from the provision of Schedule 2, Part 3, Class Q of the GPDO, the appeal building must have been an agricultural building within the Class Q meaning as of the 20 March 2013. In this case insufficient information has been submitted to establish whether the building was in such a use on the required date and, therefore, I find that the proposal before me is not permitted development. Consequently, I conclude the proposal is development for which planning permission is required. An application for planning permission would be a matter for the Local Planning Authority to consider in the first instance.

Other matters

22. Given my findings above, the implications of Condition 6 of planning permission 3PL/2009/0772/F have not been a determinative matter.

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR