
Appeal Decision

Site visit made on 20 September 2016

by Stephen Hawkins MA MRTPI

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

Decision date: 27th October 2016

Appeal Ref: APP/L3815/W/16/3151718

Mallards Farm, Guildford Road, Loxwood RH14 0QW

- 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 Des Moore against the decision of Chichester District Council.
 - The application Ref LX/15/03623/PA3Q, dated 30 October 2015, was refused by notice dated 29 January 2016.
 - The development proposed is change of use from agricultural building to dwelling (C3 Use Class).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the proposed development in the heading is taken from the planning statement, which is cross-referenced on the application form.

Main Issues

3. These are:
 - Whether the proposal would be permitted development, having regard to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
 - Whether the Council gave notice of its decision in accordance with the procedure for applications for prior approval, having regard to Part 3, W. of the GPDO.

Reasons

4. The appeal building ("the building") is a single storey structure constructed in a mix of brick, block and timber, with a fibre cement sheet roof. When I visited, the interior contained animal pens, a water trough and a manure area. However, the building appeared to be unused. The building forms part of a complex of rural structures. It faces across a small overgrown external area also included in the appeal site, onto the side of a large, modern building. To the rear are a range of stables grouped around a courtyard, which are currently empty. An internal door leads from the building into the stables. The complex is accessed from a long private drive which passes a group of dwellings, most of which appear to be converted barns, as well as other rural buildings.
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Whether permitted development

5. In order to be permitted under Part 3, Class Q of the GPDO, the proposal firstly has to comply with the limitations set out at Q.1 (a)–(m). The appellant considers that the building was used solely for agriculture as part of an agricultural unit on 20 March 2013, in which case the proposal would accord with sub-clause (i) of limitation Q.1 (a).
6. An examination of the available evidence concerning the use of the appeal site on 20 March 2013 is analogous to making a determination under Section 191 of the Planning Act¹. Therefore, I have had regard to the Planning Practice Guidance (PPG) section '*Lawful Development Certificates*'. Paragraph 006² indicates that if the available evidence does not contradict or otherwise make an applicant's version of events less than probable then there would be no good reason to refuse an application in respect of an existing use, provided the applicant's evidence alone is sufficiently precise and unambiguous. Paragraph 006 makes it clear that the relevant test to be applied to the evidence is the balance of probability.
7. The appellant's case is supported by the sworn statement of Lucy Fisher (LF) dated 21 January 2016. LF says that Mallards Farm was used for agricultural purposes and an income was obtained from it in the period 1996-2014, and that the building was in use for agriculture during that period. However, in a sworn statement dated 13 December 2011, the then owner Freda Fisher (FF) had described the use of Mallards Farm as being for private equestrian purposes since 1995. She stated that, at the time, such use still subsisted. Only in the subsequent paragraphs of her statement did FF go on to describe in detail the use of the buildings and land included in application reference LX/11/05487/ELD, made under Section 191 of the Act. Consequently, whilst I have considered LF's comments on FF's statement, it seems to me that FF was initially referring to all of Mallards Farm, including the appeal site, and not just the red line area of the above application. LF's evidence is therefore inconsistent with that of FF.
8. LF's recollection also inconsistent with that of local residents. In particular, Mrs Sherring (MS) describes the use of Mallards Farm as being mainly for equestrian purposes, with little agricultural activity, in the period between 1998 and 2014. LF's statement refers to estate agent particulars which she says describe the building as a '*former sow yard*'. However, her statement does not contain further details that would support her recollection of the agricultural use of Mallards Farm during the period her parents owned the farm. In particular, no details such as extracts from the annual business accounts, livestock movement records and details of contracts with suppliers or purchasers, have been submitted to support the claim of an agricultural business being operated from Mallards Farm during the period she refers to. It would not be unusual to expect that such records would be kept in respect of an agricultural business operating over such a long period and that they might be still available to be produced to support the appellant's claim.
9. The details of site visits by Council officers, photographs supplied by Loxwood Parish Council (PC) and the other evidence supplied by local residents is also of relevance. On 23 May 2014, a Council officer noted that '*the buildings*' clearly

¹ Certificate of Lawful Existing Use or Development.

² Reference ID: 17c-006-20140306.

remained in equestrian use. He did not distinguish between the use of the building and the adjacent stables as he might have done, had the former obviously been in an agricultural use at that time. Moreover, at her visit on 20 November 2015 a Council officer noted horse blankets and tack, both consistent with an equestrian use, stored within the building. One of the PC's photographs, which I understand were taken in December 2015, shows the building being used to store non-agricultural items. In her representations, MS also describes the interior of the building as being full of a range of different things including horse blankets with the area outside used as a dumping ground for all different unused items. The date or dates of her visits are unclear, as her statement only refers to '*over the last few years*'. One of the photographs supplied in representations made on behalf of Dr and Mrs Drummond shows indiscriminate external storage taking place outside the building circa 2014. The above evidence all post-dates 20 March 2013. Even so, when taken with FF's statement describing events at Mallards Farm up to December 2011, there is little evidence to suggest that any significant change in activities had taken place at the appeal site between that date and the present.

10. I accept that in accordance with the principles set out in *Burdle*³, the equestrian and agricultural activities at Mallards Farm could have formed part of separate planning units. I also acknowledge that LF recalls hay cropping and grazing of livestock and horses taking place on Mallards Farm during the period that her statement covers and that those activities can fall within the definition of agriculture in the Planning Act. Even so, dependent on their scale relative to one another, all of those activities could equally have been consistent with a primary use of Mallards Farm for equestrian purposes or as a mixed use for equestrian/agricultural purposes. Similarly, if the use of the building, which as noted above is interconnected with the stables, had been to store hay, plant and machinery in connection with maintenance of the holding as LF recalls, this could also be consistent with a use associated either with an equestrian or a mixed equestrian/agricultural planning unit. No further details have been provided of the respective activities by which it would be possible to ascertain what the primary use of Mallards Farm was during the period described by LF.
11. Consequently, whilst I have taken the contents of LF's statement into account, much of the other evidence available points towards the appeal site being used either for purposes ancillary to an equestrian use or possibly a mixed equestrian/agricultural use, during the period she describes. In the absence of more detailed evidence which would indicate otherwise, I therefore consider it probable that the appeal site could have formed part of an equestrian or mixed equestrian/agricultural planning unit on 20 March 2013.
12. For all the above reasons, I find that the appellant's evidence is not sufficiently clear or precise to demonstrate that, on the balance of probability, the appeal site was used solely for agriculture as part of an agricultural unit on 20 March 2013. Consequently, on the basis of the evidence before me I cannot conclude that the proposal complies with limitation Q.1 (a) (i).
13. I have considered the recent appeal decision supplied⁴, where prior approval was given in respect of change of use of an agricultural building with non-agricultural uses also taking place within a farm complex. Even so, in that case

³ *Burdle & Williams v Secretary of State for the Environment* [1972] WLR1207.

⁴ Appeal Reference APP/J1915/W/15/3031280.

there appears to have been no disagreement between the main parties that the building was solely used for agriculture and that the primary use of the farm was for agricultural purposes as part of an agricultural unit.

14. The appellant has also referred to a prior approval given by a neighbouring Council for a barn at Manor Farm, Shripney Lane, Bersted in what are described as similar circumstances. However, from the details supplied that case appears to have concerned an agricultural building within an agricultural unit and it can also therefore be distinguished from the current appeal. I note the list of other sites supplied, where prior approval has been obtained for residential re-use of agricultural buildings. The appellant says that those cases involved similar barns to the building. Whilst that may be the case, in all of those instances the requirements of permitted development would have had to have been met and they also can therefore be distinguished from this proposal.
15. I have considered the appellant's general comments regarding what he regards as the Council's inflexible interpretation of the permitted development right under Class Q and an extract from an article regarding the handling of such applications by Councils. The appellant has also referred to an inconsistency in the Council's approach to dealing with prior approvals. Consistency in decision making is clearly important. However in the absence of any more details from the appellant in this regard, it is difficult to be able to make a meaningful comparison.
16. The Council did not find any other breach of the limitations at Q.1 (b)-(m) of Class Q. In my own assessment, I found no reason to disagree with the Council's findings in respect of these matters or in relation to the matters listed at Q.2 (1) (a)-(f). Nevertheless, this does not affect the conclusion that for the reason set out above, the proposal would not be permitted by the GPDO.

Notification of decision

17. The Council received the application on 30 October 2015 and prior approval was refused 29 January 2016. I am aware that the Council agreed an extension of the time it had to determine the application with the appellant. The Council says that it determined the application within the extended time period.
18. However, under the GPDO at Part 3, W. (11) (c), the Council has to have given notice that the application was refused within 56 days of its receipt. I note that Article 34 (2) (c) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 provides for the Council and an applicant to agree an extension of time in which to determine planning applications. Even so, there is no equivalent statutory provision within the GPDO for the parties to agree an extension of time in respect of an application for prior approval made under Part 3.
19. Consequently, the application was determined outside of the 56-day period prescribed in the GPDO. Therefore, in accordance with the principles set out in *Murrell*⁵, if the proposal had otherwise been in accordance with the scope of permitted development, prior approval would have been deemed to be granted. However, for the reason set out above the proposal does not fall within the scope of permitted development and as a result, the determination of the

⁵ *Murrell v Secretary of State for Communities and Local Government* [2010] EWCA Civ 1367.

application out of time by the Council has no bearing on the outcome of the appeal.

Other Matters

20. I have noted the appellant's comments regarding the planning merits of the appeal scheme. However, these do not affect whether the proposal is permitted by the GPDO.

Conclusion

21. For the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR