
Appeal Decisions

Hearing held on 4 October 2016

Site visit made on 4 October 2016

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 02 November 2016

Appeal A: Appeal Ref: APP/Q4625/W/16/3144937

Bowyer Farm, Lady Lane, Earlswood, Solihull, West Midlands B94 6AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Ms Lisa Bulcock against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2015/51326/PNCUDW, dated 18 June 2015, was refused by notice dated 25 August 2015.
 - The development proposed is prior notification for a change of use from agriculture building to a dwelling house.
-

Appeal B: Appeal Ref: APP/Q4625/W/16/3144939

Bowyer Farm, Lady Lane, Earlswood, Solihull, West Midlands B94 6AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Bulcock against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2015/51184/MINFOT, dated 6 June 2015, was refused by notice dated 28 August 2015.
 - The development proposed is retention of wooden clad building for agricultural purposes.
-

Decisions

1. Appeal A is allowed and approval is granted under the provisions of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 for the change of use from agriculture building to a dwelling house at land at Bowyer Farm, Lady Lane, Earlswood, Solihull, West Midlands B94 6AQ in accordance with the terms of the application Ref PL/2015/51326/PNCUDW.
2. Appeal B is allowed and planning permission is granted for retention of wooden clad building for agricultural purposes at Bowyer Farm, Lady Lane, Earlswood, Solihull, West Midlands B94 6AQ in accordance with the terms of the application, Ref PL/2015/51184/MINFOT, dated 6 June 2015, subject to the following condition:
 - 1) The existing static caravan used for agriculture purposes, and which was also used as a temporary dwelling for an essential rural worker (application ref: PA/2013/976), shall be removed from the site within six months following the date of this permission.

Preliminary Matters

3. Both the application and appeal forms for Appeal A have not described the proposal. I have therefore used the Council's wording as set out in its decision notice in the banner heading above.
4. I have determined the appeals on the drawings submitted by the appellant dated 15 September 2016, which I find more accurately reflects the number and position of buildings on the site. The drawings were referenced by both parties at the Hearing and as such I am satisfied that neither main party is prejudiced accordingly.

Main Issues

5. For Appeal A, the main issue is whether the proposal complies with Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (Class Q of the GPDO).
6. For Appeal B, the main issue is whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policies; and the effect on openness and any other harm.

Reasons

7. The appeal concerns a small livestock agricultural holding, which forms part of the appellant's wider agricultural practices on other sites. It lies within the Green Belt. The site contains a number of structures; those pertinent to the Appeals are discussed below.

Appeal A

8. The building the subject of Appeal A is referred to by the appellant as the calf pen. It is single-storey, and divided into three separate pens each one with an external access with an interconnecting door present between the left and central pens. I observed at my site visit that the central and right hand pens are currently in sole agricultural use although this has not always been the case as I discuss below. The left hand pen contains washing facilities, and there is no dispute between the parties that this is related to the agriculture activity of the site.
9. Class Q of the GPDO permits the change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within C3 dwelling house. Class Q.1 of the GPDO lists the criteria where development is not permitted. The main parties agree that pertinent to the appeal is compliance with Class Q.1 (i) of the GPDO, which states that the development is not permitted if the site was not used solely for an agricultural use, as part of an established agricultural unit, on 20 March 2013.
10. Taking the second part of the test first, the term 'established agricultural unit' is defined in the GPDO as meaning agriculture land occupied as a unit for the purposes of agriculture. While the Council alludes to the on-site presence of touring caravan located within the three pole barn structure as being potentially unauthorised, it did not dispute at the Hearing that the appeal site is an established agriculture unit for the purposes of the GPDO. From what I have seen and read, I have no reason to disagree and as such the legitimacy of

the touring caravan, which the appellant cites as being used for lambing purposes, has no bearing on the case before me. Therefore the crux of the matter is whether the calf pen building was in use for agriculture on the said date.

11. My attention is drawn to recent planning history of the appeal site, notably an Enforcement Notice (EN) which was served by the Council on the appellant on 2 March 2011. This alleged, aside from the touring caravan, that without planning permission, the calf pens had changed use from agriculture to a mixed use for agriculture purposes and an unauthorised use for residential purposes. The EN was the subject of an appeal (Ref: APP/Q4625/C/11/2150265). The Inspector found no evidence of the calf pen building being used for domestic storage at the time of his site visit on 16 August 2011; nevertheless he did accept that a breach of planning control had taken place as a matter of fact.
12. The appellant informed me at the Hearing that the calf pen building was, from the date of the Inspector's site visit until at some point in 2015, solely used for agriculture, and thus was so on 20 March 2013. The Council is not able to dispute this conclusively, because it did not visit the site again until after the submission of an application which is the subject of this appeal, this taking place in the summer of 2015. At this point, the Council states that it observed, and not disputed by the appellant, that the right hand pen was once again being used for domestic storage. A further site visit later that year found that the appellant was using the middle pen as sleeping accommodation, which the appellant states was necessary to improve overnight security and to provide a presence at the site following a fire to an open storage barn which occurred in the summer of 2015. The appellant states that domestic activities in the calf pen building ceased shortly after.
13. While it is clear that other uses have occurred in recent years, it does not follow that sole agriculture use of the building would have been unlikely on 20 March 2013, and it is not sufficient in my judgement for this supposition to have been reached by the Council based on the site's planning history. On the evidence before me, I am satisfied that the calf pen building was in sole agriculture use on the said date, which is the test I must find on irrespective of what happened before and after the said date.
14. Concerns have been raised as to whether the building is structurally able to take the conversion, and that it would fail against the conditions set out in Class Q.2 of the GPDO in respect of being within an impractical and undesirable location on the site. However, both points have not been substantiated in evidence before me, and the main parties did not raise these as concerns. While some alterations to the building may be necessary, I am not persuaded by the evidence before me that they would be so substantial as to preclude compliance with Class Q (b) of the GPDO.
15. Accordingly and on the evidence before me, I find the proposed development complies with Class Q of the GPDO.

Appeal B

Whether inappropriate development

16. The Framework identifies the protection of the Green Belt as a core planning principle. It says one of the fundamental aims of the Green Belt is to keep land

permanently open, and openness and permanence are its essential characteristics. Inappropriate development is by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight must be given to any harm to the Green Belt, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Policy P17 of the Solihull Local Plan 2013 broadly aligns with the Framework.

17. Paragraph 89 of the Framework, sets out those categories of development which may be regarded as not inappropriate. Buildings for agriculture are one such example. The appellant states that the appeal building is required for multiple purposes connected with agriculture including the storage of farm tools, animal feed, medicines, as well as a farm office and meeting/seating area, neither of which have been installed. I observed nothing at my site visit that conflicted with the appellant's assertion.
18. I agree with the Council that the appeal building takes a domestic appearance, and is rather well constructed for agricultural needs including plastered walls, conventional lighting, a fully fitted bathroom, and a proliferation of wooden sash windows positioned on all elevations. However, I find no evidence that such a building including the additional washing facilities could or indeed would not be used for agriculture purposes, or that the need for it is implausible. It is also not necessarily self-evident or axiomatic that the building will be used for another purpose other than agriculture, and if this were to occur such matters would be within the Council's control. I therefore find that the building is for an agriculture purpose and that it would not amount to inappropriate development in the Green Belt.

Effect on openness

19. The appeal building is positioned close to the site's boundary with Lady Lane and the boundary is effectively screened with tree and shrub planting. It cannot be readily seen from outside of the site. When viewed from within the site, the appeal building is seen against the backdrop of the boundary screening and against the other barns on the site. I find that its positioning and relatively modest size and scale has only a minimal effect on the site's openness and that of the Green Belt.
20. The appeal site contains a static caravan which occupies a rather central and exposed position against the other buildings, which are largely contained against the site's boundaries. The main parties agree that it enjoys a lawful use for agricultural purposes. For a three year period ending on 22 August 2016, the static caravan was used for residential accommodation granted by a planning permission (Ref: PA/2013/976). The static caravan is unattractive, and its position on the site visibly erodes openness.
21. The appellant states that, in the event of a grant of planning permission for the appeal building, the static caravan would no longer be required and would be removed from the land. The retention of the appeal building and the removal of the static caravan would have a considerably positive and improving effect on openness. The alternative, if I were to dismiss the appeal, would be the likely retention of the static caravan and removal of the appeal building, which I find would be a considerably less favourable and harmful option.

22. As the appeal building is only readily visible from within the site, it is not significantly harmful to the character and appearance of the area and is sufficiently distance from other dwellings to have no significant harm on the living conditions of occupiers of surrounding properties. Accordingly, no other harm exists from the appeal building.
23. For the reasons given above, I find that the proposed development is not inappropriate development and would improve the openness of the site and the Green Belt. It would accord with the Framework and with Policy P17 of the Solihull Local Plan 2013.

Conditions

24. The Council has suggested three conditions in the event Appeal A is granted. I find that the removal of the static caravan is necessary to remove unnecessary structures on the site and to improve its appearance and openness. However because the static caravan is lawfully required for agriculture use, I find more pertinent to apply such a condition to Appeal B, and I have done so accordingly. I discussed this possibility at the Hearing; and I am satisfied neither main party is prejudiced by my decision to do this. The Council suggests a 28 day period to remove the static caravan removal period upon occupation. However I find it would be more precise to fix a period from the date of the permission for it to be removed, and I consider a six month period to be reasonable.
25. Because Class Q.2 of the GPDO already requires such development to be completed within three years, a separate condition is unnecessary. Equally, no evidence is before me that the calf pen building would include its own curtilage, and as such I find a condition requiring details of such is unnecessary. The Council has not suggested conditions for Appeal B, and I find none are required other than that which I have mentioned above.

Conclusion

26. For the reasons given above, I find the use of the calf pen building complies with Class Q of the GPDO. I find the building for Appeal B would not amount to inappropriate development, and that taken with the removal of the existing static caravan would amount to an improvement to the openness of the site and the Green Belt.
27. Therefore I conclude that appeals A and B should be allowed.

R Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Bulcock	Appellant
Mrs Bridget Bulcock	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Benn Watkinson	Planning Officer
-------------------	------------------

DOCUMENTS SUBMITTED AT THE HEARING

1. Photographs of agriculture buildings
2. Letter of objection from Tidbury Parish Council
3. Statutory Declarations from the appellants dated 2010