
Appeal Decision

Site visit made on 11 October 2016

by Simon Warder BSc(Hons) MA DipUD(Dist) MRTPI

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

Decision date: 4th November 2016

Appeal Ref: APP/A1530/W/16/3152940

Meadow View, Chapel Road, Fingringhoe, Essex CO5 7BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3 Class Q of the Town and County Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr L Kernan against the decision of Colchester Borough Council.
 - The application Ref 152632, dated 18 November 2015, was refused by notice dated 26 January 2016.
 - The development proposed is the conversion of an agricultural building into two residential dwelling houses.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the appeal building was part of an established agricultural unit on 20 March 2013.

Reasons

3. The appeal site comprises an area of some 0.4 hectares and is adjoined by an agricultural worker's dwelling occupied by the appellant. Planning permission was granted on appeal for the use of the appeal building¹ for short term livestock housing and Council does not dispute that it was in agricultural use on the relevant date. However, it considers that the small area of land around the building does not amount to an 'established agricultural unit' for the purposes of the Order².
4. The appellant has submitted evidence to show that he farms some 145 hectares of land, some of which is around 400m 'as the crow flies' from the appeal site and some of which is further away. The Council considers that this land does not form part of the same agricultural unit as the appeal site.
5. Information submitted in support of the application for the agricultural worker's dwelling showed that the appeal building was used in association with livestock farming of the other land then held by the appellant. The current submissions indicate that the land farmed and the farming methods have not changed significantly since the Council granted consent³ for the agricultural worker's dwelling.

¹ Appeal ref: T/APP/A1530/A/90/169274/P2

² Town and County Planning (General Permitted Development)(England) Order 2015

³ Planning permission reference: 98/0856

6. The Council has referred to the definition of an 'established agricultural unit' taken from an earlier version of the Order (although the definition in the current version is not significantly different) and has made reference to the geographical separation of the appeal site and other holdings. Whilst the Council considers that the appeal building was used for agricultural storage in 2013, it has not disputed the appellant's contention that appeal building was used in association with his other holdings.
7. Although the definition of an agricultural unit in the Order is silent on the question of whether the land comprising such a unit must be contiguous it has been considered in case law⁴. This judgment indicates that a distinction can be made between the 'planning unit' and the 'agricultural unit' and that an agricultural unit can comprise geographically separate parcels of land provided that they are operated as a single unit.
8. On the basis of the information available, I consider that the appeal site and the other land farmed by the appellant were operated as a single unit on the relevant date and, therefore, that the appeal site forms part of an established agricultural unit for the purposes of Paragraph Q.1(a) of the Order.

Other Matters

9. The parties' views were sought on two other matters relating to the requirements of the Order. Class Q permits the change of use of a building and any land within its curtilage from agricultural to Class C3 use. Paragraph X of the Order interprets 'curtilage' such that its size cannot be larger than the land area of the building which is to change use. The area shown edged in red and taken up by proposals for gardens, parking and the extended driveway shown on application plan 1095/02A would significantly exceed the land area of the appeal building.
10. The appellant has submitted an amended plan omitting the car parking and extended access. There is nothing to suggest that the appeal site has an existing residential access or car parking provision.
11. Whilst Class Q and paragraph W of the Order do not refer specifically to parking and access, they do require consideration to be given to the transport and highways impacts of the proposal and to whether the location or siting of the building make its conversion impractical (defined by paragraph reference ID: 13-109-20150305 of the Planning Practice Guidance (PPG) as 'not sensible or realistic'). Consideration of the amended plan at the stage would preclude consultation on these matters. Therefore, my determination is based on the plan submitted with the application. Consequently, by virtue of the size of the curtilage proposed to change use, the proposal would not fall within the requirements of Class Q(a) and is not permitted development.
12. Paragraph Q.1(i) of the Order allows for certain building operations 'to the extent reasonably necessary for the building to function as a dwellinghouse'. Paragraph reference ID: 13-105-20150305 of the PPG advises that the permitted development right assumes that the agricultural building is capable of functioning as a dwelling, whilst allowing some building operations. However it confirms that the right is not intended to include new structural elements.

⁴ Fuller v Secretary of State for the Environment and Dover District Council 1987

13. The proposal includes new brickwork walls to replace the part open, part corrugated sheet walls and a slate roof to replace the existing corrugated sheeting. The new materials would, therefore, be considerably heavier than those the frame currently supports. The appellant contends that the new brickwork would be hung from the existing steel frame and that no new structural elements or foundations would be required. However, no details of this construction have been provided. Nor has substantive information been submitted to demonstrate that the existing frame and its foundations are capable of carrying the weight of the new materials. In this respect, I note that the Council has provided an extract of information submitted with application reference 98/0856 which suggests that the building was intended to provide open accommodation and was not in good condition in 1998.
14. Consequently, I consider that it has not been adequately demonstrated that the existing frame and foundations would be able to take additional loading imposed by the proposed wall and roof materials without the introduction of new structural elements. As such, I am not persuaded that the proposal would fall within the limitations set out in paragraph Q.1(i) of the Order.

Conclusion

15. Based on the considerations set out above, I find that the proposal is not permitted development under Class Q. Therefore, the appeal should be dismissed and prior approval should not be granted.

Simon Warder

INSPECTOR