The Planning Inspectorate

# Appeal Decision

Site visit made on 18 January 2017

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

**Decision date: 22nd February 2017**

**Appeal Ref: APP/J1915/W/16/3160281**
**Swallowfield Farm, Church Road, Epping Green, Hertfordshire SG13 8NB**

- 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 Bradley Morgan against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0977/ARPN, dated 23 April 2016, was refused by notice dated 7 July 2016.
- The development proposed is change of use of agricultural building to provide 1 No. dwelling.

## Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the change of use of agricultural building to provide 1 No. dwelling at land at Swallowfield Farm, Church Road, Epping Green, Hertfordshire SG13 8NB in accordance with the terms of the application Ref 3/16/0977/ARPN, dated 23 April 2016, subject to the following condition:

    1) The development hereby permitted shall be carried out in accordance with the following approved plans:1:1250 location plan.

## Application for costs

2. An application for costs was made by Mr Bradley Morgan against East Hertfordshire District Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues are whether the proposal would constitute permitted development and meet the conditions for prior approval set out in the GPDO.

## Reasons

*Whether permitted development*

4. Under Class Q(a) of the GPDO development is permitted consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling with Class C3 (dwellinghouses) of the Schedule to the Use Classes Order. However, such development is not permitted if any of the criteria in the following paragraph Q.1 are not met.

5. Under Q.1(a) 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, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.

6. The brick and tile building in question is rectangular in shape and of single storey construction with rooflights and loft space accommodation. It fronts onto Church Road, roughly in line with the small amount of adjacent development in Epping Green, with the main part of the holding sited to its rear. The structure was approved in 1986 as an agricultural building and alterations made to it were allowed in 2003. On 30 October 2012, following an Inquiry, an appeal[1] was dismissed over the Council's refusal of a lawful use certificate for a residential use.

7. The Inspector in that Inquiry also considered two Section 174 appeals[2] and upheld and varied an enforcement notice. This required the cessation of the use of the property for residential purposes and removal of all fittings, fixtures and furniture associated with this use, except those which were reasonably required in the continued running of the holding. These were limited to (i) WC and shower/bathroom and (ii) staffroom facilities limited to a worktop and sink, a water heater, a kettle, a microwave, a fridge-freezer, a table, chairs, a TV and room heaters. A compliance period of 9 months was given.

8. The Council is satisfied that the enforcement notice was complied with and residential use of the building had ceased before 20 March 2013. However, the Council is not satisfied that there is any evidence that, on 20 March 2013, the building was being used for agricultural purposes, such that the appellant would benefit from the change of use to a dwelling permitted under Class Q. The Council provides three main reasons to support its case.

9. Firstly the Council refers to an application for the erection of a store for bee keeping equipment (reference 3/15/20148/FUL) which the applicant had stated was required to house additional equipment that has been acquired to release space within the principal building on health and safety grounds, which was used for educational purposes associated with the honey production. Extra space was stated by the applicant as required to safely accommodate disabled visitors and their needs.

10. Secondly, the Council considers the building does not lend itself to an agricultural use and 'still now retains a residential feel, with internal layout, wallpapering, etc.' and its restrictive layout and design means that it could not store or house the animals and vehicles kept at Swallowfield Farm as set out in the supporting statement.

11. Thirdly, the Council refers to the interpretation of agricultural building in Part 3 of the GPDO as a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business. The Council considers there to be a lack of evidence which demonstrates the building was being used as part of an agricultural trade or business.

12. To benefit from the permitted development rights conferred under Class Q it must be established that, following the cessation of the residential use, the site, which is the building and land edged red in the application, was used

[1] APP/J1915/X/12/2169114
[2] APP/J1915/C/11/2167523 and 4

solely for an agricultural use as part of an established agricultural unit on or before 20 March 2013. The evidence shows this site to be part of an established agricultural unit of some 2 hectares used for the keeping of pigs, poultry, bee-keeping and horticulture. However it needs to be determined whether the building site to which this appeal relates, as part of this holding, was used solely for an agricultural use.

13. The undeveloped part of the site edged red, between the road and the main building and south of the site entrance, contained a few bee hives and fruit trees, and so I consider this part to be in use as part of the wider agricultural holding. From my visit I saw the building itself contained a kitchen, with a table and chairs, work surfaces and cupboards, with a sink and taps and facilities for preparing drinks and food. Leading to the kitchen was a room with a dresser and some comfortable chairs and a small coffee table. There was also a WC/bathroom.

14. These elements were allowed to be retained in the previous appeal decision, which upheld and varied the enforcement notice over the residential use of the building, as the Inspector agreed they were reasonably required for the running of the holding, including for the preparation of honey. These features, along with the internal fitting out of the building, convey a residential feel, which is not surprising given the previous unauthorised and unlawful use. However, these features do not persuade me that the use of the building on the relevant dates was anything other than for agricultural purposes.

15. Regarding the Council's doubts over the use of the building in relation to the educational purposes associated with the honey production and to the accommodation of the disabled visitors, the appellant's statutory declaration refutes this. In regard to this particular matter I have also considered the concerns raised by an immediate neighbour over there having been a commercial use relating to educational visits. The appellant states the farm was not being used for educational purposes on 20 March 2013 but that two young adults had been placed in the care of the operation to act as volunteers in tending the livestock. The Council has not provided further evidence to dispute this and the placement of two adults to work on the farm would not constitute a change of use or weigh against a conclusion that the building remained solely in agricultural use.

16. Whilst the building might not lend itself to an agricultural use, and retains a residential feel, there is no evidence to suggest the enforcement notice had not been complied with, or that the internal layout of the building is any different from that originally approved. The residential character of the building would therefore not, in this case, weigh against a conclusion that it was being put to an agricultural use.

17. The appellant advises that the building was approved as an open-sided agricultural building in 1986 and the Council gave permission in 2003 to enclose the open sides and install windows and roof lights. In my view this permission would have curtailed the agricultural use of the building, such as for the storage of large machinery or vehicles or for keeping larger animals, such as pigs. Whilst the building might not be convenient for the storage of agricultural machinery or for housing livestock I am persuaded by the evidence provided that it is in accordance with the plan approved by the Council and would be suitable for the storage of animal feed, bee keeping and veterinary

materials and as mess room accommodation ancillary to the wider farm holding.

18. At my visit there was little agricultural storage taking place in the building, apart from a few bales of straw, a single caged turkey, some jars of honey and various other items stored throughout the ground floor and in the roof space. However, the appellant's statutory declaration refers to the moving back into the building of the animal feedstuffs, bee hives, bee keeping equipment and other items which had been housed in the adjacent workshop building during the period of the unauthorised residential occupation.

19. I have no reason to doubt the appellant's statutory declaration and the Council has provided no further evidence to refute this. I have also considered the statutory declaration from Frank Banner, another immediate neighbour to Swallowfield Farm, in regard to the purchase of hay from the building in February 2013 and its use at that time. For the reasons given, the evidence is that on the balance of probability the site was used solely for an agricultural use as part of an established agricultural unit after the cessation of the unauthorised residential use and before 20 March 2013. As such, this proposal would be permitted under Class Q of the GPDO.

*Conditions for prior approval*

20. Although not accepting the evidence that the proposal would have the benefit of the change of use to a dwelling permitted under Class Q, the Council has also proceeded to refuse prior approval based on the conditions for this set out in Paragraph Q.2. This followed the prior approval procedure in Schedule 2 Part 3 W(3) of the GPDO. The consultation necessary had been carried out by the Council prior to making this decision.

21. The provisions of Paragraph Q.2 require the local planning authority to assess the development permitted under Class Q(a) solely on the basis of its impacts on transport and highways, noise, contamination risks on the site, flooding risks and whether the location or siting makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse. My determination of this issue has been made in the same manner.

22. The Council's refusal to grant prior approval rests on consideration (e) in Paragraph Q.2 which requires an assessment of whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use from agricultural to residential. I agree with the Council that there would be no material harm arising from considerations (a)-(d) listed in Paragraph Q.2. Consideration (f), concerning the design or external appearance of the building, does not apply in this case.

23. Paragraph 108 of the Planning Practice Guidance (PPG) states that this permitted development right does not apply a test in relation to the sustainability of location. This is deliberate as many agricultural buildings will not be in settlements and may not be able to rely on public transport for their daily needs. Instead the consideration can be whether the location and siting of the building would make it impractical or undesirable to change use to a house.

24. Paragraph 109 of the PPG advises that whilst 'impractical and undesirable' are not defined in the regulations a reasonable ordinary dictionary meaning should

be applied in making any judgement. Impractical is stated as reflecting that the location and siting 'would not be sensible or realistic' and undesirable that it would be 'harmful or objectionable'. The PPG further advises that when considering whether it is appropriate for the change of use to take place in a particular location this should start with the premise that the permitted development right grants permission, subject to the prior approval requirements. Where an agricultural building is in a location where permission would not normally be granted for a dwelling this is not a sufficient reason for refusing prior approval.

25. The sustainability of the location is central to the Council's decision and, having considered the advice of the PPG, greater weight has been given to Paragraph W(10)(b) of the GPDO over regard being had to the National Planning Policy Framework (the Framework) as far as relevant to the subject of the prior approval as if it were a planning application. The Council's approach is based on legal advice that the PPG is in conflict with the requirements of the GPDO. The Council has been granted consent from the High Court to challenge through judicial review a similar case to this, where an Inspector allowed an appeal[3] relating to a refusal of prior approval due to its isolated location for change of use from agriculture to residential. However, the outcome of this judicial review is pending.

26. The Council is therefore basing its decision primarily on the Framework, and specifically Paragraph 49 in respect of considering housing applications in the context of the presumption in favour of sustainable development and Paragraph 55 in respect of enhancing or maintaining the vitality of rural communities, avoiding new isolated homes in the countryside and for the re-use of farm buildings leading to an enhancement to the immediate setting.

27. Government legislation, policy and guidance should be considered in the round. The intention of GPDO Class Q is to encourage the re-use of redundant farm buildings and the PPG qualifies the presumption in favour of sustainable development in the Framework in recognition of such buildings often being located outside of a settlement. In this case, Swallowfield Farm is quite clearly within and a part of the small settlement of Epping Green and not in an entirely isolated and remote location. The change of use would cause no material harm in respect of the character and appearance of the area. The building fronts a metalled road serving adjacent dwellings.

28. Pending the outcome of the judicial review, I find no reason that the siting or location of this proposal would make the change of use from agricultural building to a single dwelling either impractical or undesirable. I have considered the case made by the Council over the sustainability of this location but, having had regard to the PPG, do not consider refusal of prior approval for this reason would accord with current and explicit Government advice.

**Conclusion**

29. For the reasons set out above I conclude that the appeal should be allowed.

*Jonathan Price*

INSPECTOR

[3] APP/J1915/W/16/3142497