
Appeal Decision

Site visit made on 21 February 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 24 March 2017

Appeal Ref: APP/H1840/W/16/3163650

Agricultural Building, Lodge Farm, Plough Lane, Tibberton, Worcestershire WR9 7NG

- 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 Andrew Lloyd against the decision of Wychavon District Council.
 - The application Ref GPDQ/16/01965/GPDQ, dated 8 August 2016, was refused by notice dated 4 October 2016.
 - The development proposed was described as "*Prior Notification under Schedule 2, Part 3, Class Q for the change of use of former agricultural building to a dwelling*".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning Practice Guidance (PPG) advises that the starting point for Class Q is that the permitted development rights grant planning permission, subject to the prior approval requirements. However, it is necessary to determine whether the proposal falls within permitted development. Class Q of the GPDO¹ states that development consisting of Q(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule of the Use Classes Order²; and Q(b) building operations reasonably necessary to convert the building, is permitted development.
3. Where development is proposed under Class Q(a) together with Class Q(b), it is permitted subject to the condition under paragraph Q.2 (1) that before beginning the development, an application must be made to the local planning authority for a determination as to whether the prior approval will be required as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building.
4. The Council refused the application for prior approval because it considered that insufficient evidence had been submitted to demonstrate that the application building/site was last used solely for an agricultural use as part of

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

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

an established agricultural holding. They also considered that due to the lack of evidence of any agricultural activities on the site since 2009 and all evidence related to an equestrian use of the land, it was considered, that the building was not used as part of an established agricultural unit.

5. At my site visit I was not able to view part of the interior of the building as the first floor was inaccessible due to the absence of a safe means of access and the door on the Plough Lane side of the building could not be opened.
6. There is no dispute between the parties that the current proposal for change of use and operational development would otherwise meet the requirements of Schedule 2, Part 3, Class Q, paragraphs Q.1(b)- (m) of the GPDO.

Main Issues

7. Taking into account the above, the main issues are:
 - whether the proposal would be permitted development, with regard to whether the requirements of Class Q of the GPDO in terms of paragraph Q.1 (a) would be met, and;
 - if so, whether or not prior approval is required and the proposal would be acceptable in relation to the matters sets out in paragraphs Q.2(1)(a) to (f) of the GPDO.

Reasons

Whether the proposal would be permitted development

8. Q.1 (a) is clear that development is not permitted if '*...the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20th March 2013 or (ii) 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*'.
9. 'Agriculture' as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended), amongst other things, includes horticulture, fruit growing, seed growing, the breeding and keeping of livestock and the use of land as grazing land. Schedule 2, Part 3, paragraph X of the GPDO further sets out that for the purposes of Part 3 permitted development rights, the site is defined as '*the building and any land within its curtilage*'.
10. The site boundary has been marked edged red immediately around the existing agricultural building. This site boundary does not include any area of land outside of the footprint of the barn. However, the application form states the area of land within the barn's curtilage would be 56 square metres. To meet the definition in paragraph X of the GPDO the curtilage would need to be immediately beside or around the agricultural building within the land holding shown within the blue line on the location plan³. Therefore 'the site' is defined by the building and 56 square metres of adjacent land within the land marked by the blue line.
11. The appeal site forms part of the land holding of Lodge Farm. At my site visit I noted that the appeal building is of brick and slate construction and is in a neglected state of repair. It is located in close proximity to Plough Lane and the adjacent farm. Due to the access issues, stated above, I was only able to

³ Drawing Number 0803/P/A/01

view part of the building's interior. Within that part of the building there were the remnants of animal pens/stalls but otherwise that part was empty. The proposed curtilage would be formed from part of a large paddock that was divided into smaller areas by the use of fence posts and a type of electric fencing at the time of my site visit.

12. The appellant has submitted a statutory declaration from Susan Groves stating that from 1978 until 2008 the appeal building was used for agricultural storage and for occasional pig rearing. She also states that since the building was bought by the appellant in 2008 the building has not been used for any other use. This evidence is not disputed by the Council. Even though I could not view the entire interior of the building I consider, taking into account all of the above, that on the balance of probabilities the building has not been used since 2008.
13. I acknowledge that the appellant is relying on the provision of Q.1 (a) (ii). However, the PPG states that *'the site must have been used solely for an agricultural use, as part of an established agricultural unit, on 20 March 2013, or if it was not in use on that date, when it was last in use'*⁴. There is no dispute that even though the building has not been used the site has been in use after the appellant bought Lodge Farm.
14. The proposed site includes part of the land edged blue and the statutory declarations from Susan Groves and Kevin Gwilliam state that this land has been used for agricultural purposes including making hay each year. Both of the declarations also state that the only period when horses have been on the land is between April-July 2016 and that this was for the purposes of grazing.
15. The appellant has stated that Lodge Farm does contain equestrian facilities but that the remainder of the land is in agricultural use. However, the Council have submitted an email dated 30 March 2016, from the appellant's agent on a previous prior notification application, which states that *'as you observe the remainder of the farm and buildings are in equestrian use since shortly after the farm was taken over in 2009'*. I noted at my site visit that a number of buildings in close proximity to the main access to Lodge Farm appear to be used for equestrian purposes and a ménage area was being used by horses and riders at the time of my visit.
16. The equestrian use of land can be treated as agricultural if the horses are kept for working purposes or if they are simply turned out on land with a view to feeding them from that land i.e. grazing. However, if they are fed additional food or if they are ridden or exercised that is the keeping of horses then the use ceases to be agricultural. There is no indication that the equine use within the appellant's ownership has been for agricultural purposes, despite the presence of some land suitable for grazing. Consequently, the equine uses at Lodge Farm do not comprise an established agricultural unit.
17. It is therefore, necessary to assess whether the site subject to the appeal has been used independently from the equine use and, therefore, solely used for an agricultural use as part of an established agricultural unit as required under paragraph Q.1(a). As stated above the building has not been used since the appellant purchased Lodge Farm.

⁴ Paragraph: 106 Reference ID: 13-106-20150305

18. However, the site which includes part of the adjoining paddock has continued to be used. Even though the statutory declarations indicate that it has been used only for hay making I have no evidence before me to indicate that this is part of a separate established agricultural unit from the equine use. Hay making and storage can relate to both agricultural and equestrian uses. I noted at my site visit that a number of hay bales wrapped in plastic were being stored adjacent to the buildings that are close to Lodge Farm's main access. Moreover, the subdivision of the paddock by the use of electric fencing, even though parts of the fencing were in a state of disrepair, and its proximity to the buildings being used for equestrian use and the ménage indicates an association to the equine use.
19. Taking all of the above into account, based on the evidence before me, observations during my visit and the balance of probabilities, I am not satisfied that the site was used independently from the adjacent non-agricultural uses on 20 March 2013 or thereafter. It, therefore, follows that I cannot conclude that the site has been used solely for an agricultural use as part of an established agricultural unit as required by paragraph Q.1(a). I, therefore, must conclude that the change of use would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO and therefore is not development permitted by it.
20. If the scheme met all the other requirements of Class Q, it would be open to me to define an appropriate curtilage so as to bring it within the provisions of Class Q. However, as I have found that the proposal would not be permitted development, it is not necessary for me to do so.

Prior approval

21. Given my conclusion that the change of use would not be development permitted under Schedule 2, Part 3, Class Q of the GPDO, there is no need for me to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

22. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed under the prior approval provisions set out previously.
23. The appeal is, therefore, dismissed.

D. Boffin

INSPECTOR