
Appeal Decision

Site visit made on 16 March 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 05 April 2017

Appeal Ref: APP/A4710/W/16/3165183

Woodlands Barn, Bradshaw Lane, Bradshaw, Halifax HX2 9QX

- 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 B Sutcliffe against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 16/56016/CLAS3Q, dated 5 August 2016, was refused by notice dated 18 October 2016.
 - The development proposed is prior approval for change of use from an agricultural building to dwelling (C3).
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Decision

1. The appeal is allowed and prior 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 (the GPDO) for the change of use from an agricultural building to a dwelling (C3) at Woodlands Barn, Bradshaw Lane, Bradshaw, Halifax, HX2 9QX in accordance with the terms of application Ref 16/56016/CLAS3Q, dated 5 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. 16-098-01A - Plans as Existing, Drawing No. 16-098-10B - Plans as Proposed.

Procedural Matter

2. The address for the site is stated on the original planning application form as land at the Barn, Woodlands Farm, Bradshaw Lane, Bradshaw, Halifax. The Council's Decision Notice however refers to Woodlands Farm Barn. On the Appeal Form the address is stated as Woodlands Barn. My site visit confirmed that this latter address appears to be how the property is known and I have therefore used this in my decision above.

Main Issues

3. The main issue in this case is whether the proposed development constitutes permitted development in respect of Class Q (a) of the GPDO, having regard to whether the site was solely in agricultural use, as part of an established agricultural unit, within the applicable timeframes and, where it would
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constitute permitted development, whether or not it would require prior approval in respect of the accompanying conditions set out in paragraph Q.2.

Reasons

4. The application that constitutes this appeal was made under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). Schedule 2, Part 3, Class Q of the GDPO states that development consisting of: (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use within Class 3 (dwellinghouses) of the Schedule to the Use Classes Order¹; and (b) building operations reasonably necessary to convert the building, is permitted development.
5. Paragraph Q.1 (a)-(m) of the GDPO sets out the relevant exemptions and limitations of the permitted development right. In this regard the Council's reason for refusal relates only to Q.1 (a).
6. Paragraph X of Schedule 2, Part 3 of the GPDO, states that, "... "agricultural building" means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business...". It is not disputed that the building is not currently in use for agriculture but was in such use on 20 March 2013. The Council considers that at the time of their decision insufficient information had been provided to show that an agricultural business was operating on the site. The Officer's report stated that the amount of turnover and profit identified on the balance sheets suggested that it was more of a hobby than a business.
7. The appellant has submitted a legal opinion which considers this matter further. Reference is made to a number of appeal decisions including Oaken Royd Barn in Norland, Sowerby Bridge² where it was found that despite very small profit levels, the site was in an agricultural use which constituted a trade or business.
8. The appellant acknowledges that the farming operation was a part time occupation. This does not in itself mean that an agricultural business was not in operation as was found in the case of Cotswold District Council v Cheltenham Chopper Club (1994) 9 P.A.D.764.
9. I note that the appellant has a County Parish Holding Number and Single Business Identifier obtained in January 2012. Whilst I accept that this does not necessarily demonstrate an agricultural business, I have also noted the balance sheets and invoices provided by the appellant. Invoices show the purchase of lambs, though I accept low in numbers, as well as feed stuffs and the cost of slaughter. The balance sheets show that lambs were sold to various friends and family and a small profit was made in 2012, 2013 and 2014.
10. The Council has argued that the 'sale of lamb meat to various friends and family' does not demonstrate a trade or business operation. I note that the 2013 balance sheet shows the sale of lamb to S&C Meats, a butcher who also slaughtered and cut up the meat. No receipt of sale is provided however, only an invoice for the slaughter and butchering. The appellant has also provided a

¹ The Town and Country Planning (Use Classes Order) 1987 (as amended)

² APP/A4710/W/15/3138327

statement from a customer who confirms that she purchased lamb from him on a number of occasions in 2012/13 to sell at various markets and farm shops.

11. I understand the Council's concerns, and acknowledge the limited sales receipt information available in this case. The onus of proof is on the appellant and the correct test that should be applied is 'on the balance of probability'. Based on the evidence before me, I conclude that the site was used for agricultural purposes and that a trade or business was in operation, albeit very small scale. Therefore Class Q.1 (a) of the GDPO is satisfied. The Council has not disputed that the proposal would meet the exceptions of Class Q.1 (b) – (m). I have no reason to disagree. I therefore conclude that the proposal forms permitted development in terms of Class Q (a) and Q (b).
12. It is therefore necessary for me to assess the proposal in terms of the conditions in paragraph Q.2 to determine if prior approval is required. These include (a) transport and highways impacts, (b) noise impacts, (c) contamination risks, (d) flooding risks, (e) whether the location or siting of the building makes it impracticable or undesirable for a dwelling, and finally (f) design or external appearance of the building. The reason for refusal made no reference to non-compliance with these conditions and the Council have raised no concerns in their evidence. I have no reason to take a different view. I am therefore satisfied that Conditions (a) – (f) of paragraph Q.2 are met and prior approval is not required.

Conditions

13. In granting approval, the appellant should note that there is a requirement in the GPDO at paragraph Q.2 (3) for development under Class Q (a) to be completed within three years of the date of prior approval being granted. A condition relating to the commencement of development is therefore not necessary. A number of other conditions apply to such development, including paragraph W (12) of the GPDO which requires that the conversion is carried out in accordance with the details provided in the application. However, for the avoidance of doubt and for clarity I consider that a condition listing the plans is necessary.

Conclusion

14. I have found that the proposal would constitute permitted development in respect of Class Q (a) and that prior approval is not required in respect of the conditions set out in paragraph Q.2. For the reasons given above and having regard to all other matters raised, I allow this appeal.

Helen Hockenhull

INSPECTOR