
Appeal Decision

Site visit made on 28 March 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 27 April 2017

Appeal Ref: APP/P1425/W/16/3163582

Clevedon, The Broyle, Ringmer, East Sussex BN8 6PH

- 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 Roy Higgs against the decision of Lewes District Council.
 - The application Ref LW/16/0529, dated 21 June 2016, was refused by notice dated 22 September 2016.
 - The development proposed is prior approval for a change of use of an agricultural building to a dwelling house (Class C3).
-

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order (England) 2015 (GPDO) permits the change of use of an agricultural building and any land within its curtilage to a residential use, along with building operations reasonably necessary to convert the building. This is subject to a number of situations where such development is not permitted, listed under paragraph Q.1, and to conditions in paragraph Q.2.
 3. In this case, the Council has raised an issue in relation to the extent of the curtilage around the appeal building under Class Q of the GPDO and the exclusion in paragraph Q.1 (a) in respect of the agricultural use of the building. On the evidence before me, I have no reason to come to any alternative view.
 4. On that basis, the main issues are:
 - Whether the proposal would accord with permitted development requirements relating to the extent of the curtilage under Schedule 2, Part 3, Class Q of the GPDO; and
 - Whether or not the building was used solely for an agricultural use, as part of an established agricultural unit, within the applicable timeframes in paragraph Q.1 (a) of the GPDO.
-

Reasons

Curtilage of the proposed development

5. The appeal site comprises a timber framed barn building that is set back from the road within an open field. It is situated behind a dwelling and stable building that forms part of a small cluster of ribbon development in the open countryside along the southern side of The Broyle. The barn is accessed via a driveway at the side of the main dwelling and is separated from the dwelling and stable building by fencing.
6. The appeal form indicates that the area of the whole appeal site is 0.2ha and that the floor area of the agricultural building to be converted is about 65 sqm. The floor area is therefore below the size threshold set in paragraph Q1(b) of the GDPO. However, there is also a requirement relating to curtilage. The definition given in Schedule 2, Part 3, Paragraph X of the GDPO states that, for the purposes of Class Q, the curtilage means (i) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser. This means that the curtilage should not exceed 65 sqm in this case.
7. On my site visit I observed that the barn is surrounded by an open field, but does not itself have a clearly defined piece of land with which it is closely associated. Nonetheless, the amended submitted site plan (2016/055/PL2 rev:C) indicates a designated 'curtilage' area immediately to the south of the barn shown edged in green, which does not appear to exceed the floor area of the appeal building.
8. However, the submitted plans also show a much larger red lined 'proposed site boundary' which extends to the north of the barn and incorporates a large area of land marked as a 'cobbled forecourt' and a car parking area. The 'cobbled forecourt' and parking area lie immediately to the north of the existing stable building is enclosed by fencing and linked to the barn by a pedestrian access. I consider on the basis of its position, access arrangements and the enclosed nature of this area, it is likely that the cobbled forecourt and parking area would function as a separate parking area and would be used for domestic purposes by the occupiers of the proposed dwelling. As such, the area of land which would operate as curtilage would be significantly greater than the area of the existing barn.
9. Consequently, the extent of the curtilage falls outside the definition given in Schedule 2, Part 3, Paragraph X of the GDPO. Therefore, I conclude that the extent of the curtilage as defined by the red line site boundary precludes the proposal from being permitted development and as such the proposal does not meet the requirements under Schedule 2, Part 3, Class Q of the GPDO.

Agricultural use

10. Paragraph X of Schedule 2, Part 3 of the GPDO, states that an 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business. The GPDO does not define at what point an agricultural activity becomes a trade or business. Development is not permitted by Paragraph Q(a) of the GDPO if the site was

not solely used for an agricultural use as part of an established agricultural unit¹ on or before 20 March 2013 or for 10 years before the date the development begins. As such, whether or not the appeal building was an 'agricultural building' on the 20 March 2013, as defined by the GPDO, is a matter of fact and degree based on the particular merits of the case and the evidence presented.

11. The GPDO further sets out that 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture. I would note that nowhere in relevant legislation or the Planning Practice Guidance is there a requirement for such a trade or business to be of a certain scale, intensity or turnover in this context.
12. It is not disputed by the Council and appellant that the building was designed for agricultural purposes when it was originally built in the 1980s. The appellant states the barn was used between 2007 and 2015 for the keeping of livestock. At the time of my visit the barn was being used for storage of small scale agricultural and non-agricultural items. The building contained a number of partitions that appeared to have been used in the past and remain suitable for the accommodation of livestock.
13. The appellant has submitted various supporting information regarding the agricultural activities undertaken at the appeal site including a County Parish Holding Number and Single Business Identifier obtained in September 2011 and an Animal Health Registration letter from September 2011. Whilst I accept that these do not necessarily demonstrate an agricultural business, I have also noted the DEFRA reports showing movement of pigs by the appellant between 2011 and 2014 received as weaners and transported to a local abattoir. A letter from a Turkey Poults supplier in June 2016 also confirmed the supply of young turkeys to the appellant between 2012 and 2015.
14. The Council has questioned the details submitted regarding the agricultural activities and whether the number of pigs and turkeys being kept on the land was sufficient in itself to establish that the building and land have been used as an agricultural business. The Council also indicated that the evidence submitted was identical to that submitted with a previous prior approval application² for the conversion of the existing stable building to a dwelling, which was subsequently withdrawn. This raised some element of doubt regarding the exact use of the barn.
15. 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 evidence provided demonstrate that the use of the site was used for no more than hobby farming rather than an established agricultural trade or business.
16. Following a request from the Council, additional information was submitted by the appellant as part of the original application process. This comprised of a selection of receipts for the processing and the sales of pig and turkey meat over the period from November 2012-May 2013 and photographic evidence of pigs and turkeys being kept at the barn in December 2012 and April 2013.

¹ Paragraph X Interpretation of Part 3 Established agricultural unit means agricultural land occupied as a unit for the purposes of agriculture.

² LW/15/0824

Notwithstanding this, the Council consider the receipts submitted to be generic, with no indication that they have been issued by a trade or business. I understand the Council's concerns, and acknowledge the limited information available on the sales receipts 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'.

17. Paragraph 4.7 of the appellant's appeal statement shows further evidence, though I accept low in numbers, including an invoice from the abattoir relating to the transport of pigs in May 2013 and a subsequent invoice from a butcher to cut and prep two pigs on 23 May 2013. Although there are no financial accounts to verify the appellant's position there is nonetheless information before me over a lengthy period of time since the activity on site commenced, from the appellant and various sources attesting to the livestock purchases, sales and movements to and from the appeal site and confirming the purchase of pig and turkey meat which pre-date 20 March 2013.
18. Therefore, on the balance of probabilities and based on the evidence before me, I cannot find other than that the use to which the appeal site has been put amounts to a trade or business rather than a hobby. I conclude that the barn whilst not presently in use for agriculture was, at the relevant date 20 March 2013, used solely for agricultural use and that a trade or business was in operation, albeit of a comparatively small scale. I have also carefully considered the Council's representations in relation to the site not being part of an established agricultural unit. However, there is nothing in Class Q that requires the agricultural unit to be farmed or operated by the owner or, for that matter, intensively.

Other matters

19. I noted the Council's references to a number of appeal/court decisions and the taxation guidance from the Government HMRC website. The small agricultural businesses have different development characteristics to the appeal scheme and took place some time ago in a different policy context. Nevertheless, each case must be judged on its merits, and it is on this basis that I have determined this appeal. The taxation information is generalised guidance and planning legislation requires that the proposal is considered against the national and local planning policies. I accord these matters limited weight.

Conclusion

20. Notwithstanding my findings regarding the agricultural use of the appeal building, I conclude that the proposed development would not accord with the requirements for permitted development relating to the extent of the curtilage under Schedule 2, Part 3, Class Q of the GPDO, as the area of curtilage would be significantly larger than the area of the barn. Thus it is not necessary or appropriate for me to comment on the planning merits of the development and whether the proposal meets the conditions in paragraph Q.2 of the GPDO. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR