

Appeal Decision

Site visit made on 25 April 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 12th May 2017

Appeal Ref: APP/J1915/W/17/3166645
94 Burnham Green Road, Welwyn AL6 0NQ

- 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 Graham Lund against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/1901/ARPN, dated 18 August 2016, was refused by notice dated 18 October 2016.
 - The development proposed is the change of use of an agricultural building from agricultural use to residential use (Class C3).
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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 (as amended) for the change of use of an agricultural building from agricultural use to residential use (Class C3) at 94 Burnham Green Road, Welwyn AL6 0NQ in accordance with the terms of the application Ref 3/16/1901/ARPN, dated 18 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: P001, P002, P003, P004 and P005.
 - 2) No development shall commence until a scheme to deal with potential contamination of land and/or groundwater has been submitted to and approved in writing by the local planning authority. The scheme shall include a desk-top study and a site investigation along with a written method statement for the remediation of any land and/or groundwater contamination. The site shall be remediated in accordance with all of the approved measures and a verification report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development.
 - 3) Prior to the first occupation of the development hereby permitted, details of the means of access, including the siting of any entrance gates, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the first occupation of the development and shall thereafter be retained as such.
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Procedural Matters

2. The description of the proposed development is taken from the appeal form rather than the application form for clarity.
3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) provides for the 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 (dwellinghouse) of the Use Classes Order 1987 (as amended), and any building operations reasonably necessary to convert the building.
4. Although not explicit in the application form, it is clear from the plans and documents submitted for this proposal that the appellant seeks both a change of use of the appeal building and any land within its curtilage as well as building operations reasonably necessary to convert the building. The area of land around the building within the red line on the site location plan (drawing no. P005) appears to be no greater than the land area occupied by the building as required by Paragraph X of the GPDO in terms of curtilage. I have therefore treated this proposal as relating only to the building and the land within the red line boundary on the site location plan.
5. Schedule 2, Part 3, Paragraph W(3) states that a local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any specified conditions, limitations or restrictions. It was on this basis that the Council refused to grant prior approval.

Main Issue

6. The main issue is whether the proposal falls within the provisions for permitted development under Schedule 2, Part 3, Class Q of the GPDO, with regard to the use of the building.

Reasons

7. Class Q requires the use of a building to be in agricultural use at the time that the change of use is being considered. In addition, there is a requirement in Paragraph Q.1(a) that the building was used solely for agricultural use as part of an 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. Paragraph X of the GPDO defines an agricultural building as a building used for agriculture and which is so used for the purposes of a trade or business.
8. The appeal building is situated to the north-east of 94 Burnham Green Road within a large area of rough grassland separated from the domestic garden of No 94. At my site visit, I observed that the western half of the building is being used to house pigs, with the eastern half used for the storage of animal feed and bedding along with farm-related machinery and equipment. Notwithstanding the observations of the Council and neighbouring residents, I saw little evidence of general or domestic storage within the building.
9. The appellant has sought to demonstrate that he has kept pigs at 94 Burnham Green Road since at the spring of 2006 and has operated as a partnership trading pigs since April 2011. Although the site and livestock numbers are

small, it would appear from the documents provided that activities have consisted of more than just hobby farming, with movements and sales of pigs in a commercial capacity. The fact that the business has previously operated as a loss makes no difference to its commercial nature.

10. Based on the above evidence, I am satisfied that the appeal building is currently in an agricultural use for the purposes of a trade or business, and has been in such use since at least 20 March 2013 as part of an established agricultural unit. Therefore, the criteria under Paragraph Q.1(a) are met. There is no evidence before me to indicate that any other criteria contained within Paragraph Q.1 would be conflicted and so I consider the proposal to be permitted development.
11. I have considered the prior approval matters under Paragraph Q.2(1)(a) to (f) taking into account comments made by the Council and interested parties. In terms of transport and highway impacts, Burnham Green Road runs relatively straight past the appeal site with a reasonable level of visibility in both directions. The road appears to be busy at times as a through route with some on-road parking. However, the visibility conditions and modest scale of development means that there would be an acceptable impact subject to the provision of a satisfactory access details of which could be secured by condition. Any effects arising from construction traffic would be temporary.
12. There are a number of existing dwellings along Burnham Green Road and the proposed development would be set back from the road with no extensions to the existing structure. Thus, there would little negative impact on the living conditions of occupants of nearby properties in terms of noise. Furthermore, the external alterations would be sympathetic to the surrounding area in terms of materials and detailing with no extensions to the existing structure. Thus, there would be an acceptable effect in terms of the design and external appearance as well as for the outlook for occupants of nearby properties.
13. The effect on Green Belt is not one of the matters for consideration under paragraph Q.2(1), nor is the loss of agricultural activity or the effect on wildlife. Burnham Green has a village shop and public house and a bus stop albeit with a limited range of services to nearby towns. Thus, the location of the building is not impractical or undesirable in terms of the proximity of services and facilities.
14. The Council has indicated that contamination risks can be addressed by condition and no flood risk issues are raised. Thus, in the context of this appeal, I consider that none of the matters set out in Paragraph Q.2(1)(a) to (f) indicate that prior approval should be withheld.

Conditions

15. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity, it is necessary to impose a condition setting out the approved plans. A condition relating to contaminated land is necessary given the comments of the Council's Environmental Health department and the current use of the building. A condition relating to access details is also necessary in the interests of highway safety noting the comments of the Highway Authority.

16. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of 3 years starting with the prior approval date, so it is not necessary to impose a separate time limit.

Conclusion

17. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed and prior approval granted.

Tom Gilbert-Wooldridge

INSPECTOR