
Appeal Decision

Site visit made on 9 May 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 31 May 2017

Appeal Ref: APP/H1840/W/16/3162932

The Thirteens, adj to Orchard Place, Bretforton Road, Badsey, Evesham, Worcestershire WR11 7XQ

- 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 Kelvin Hughes against the decision of Wychavon District Council.
 - The application Ref GPDQ/16/01274/GPDQ, dated 16 May 2016, was refused by notice dated 24 June 2016.
 - The development proposed is change of use from agricultural unit to 3 x dwelling houses with a total floor area of under 450m².
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is whether or not the proposed development would be permitted development as provided for by Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO), with particular regard to the use of the building on or before 20 March 2013.

Reasons

3. Schedule 2, Part 3, Class Q of the GPDO sets out that development is classed as permitted development if it consists of the change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and building operations reasonable necessary to convert the building to a use falling within the Class C3 (dwellinghouses) of that Schedule. 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.
 4. The GPDO provides interpretation in Paragraph X that an 'agricultural building' is a building used for agriculture and which is so used for the purposes of a trade or business.
 5. The application and appeal relate to the change of use only, under Q(a). Any other building operations or works required to form the conversion, under Q(b), would require a separate application. Whilst the Council Officer's report
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expresses some concern regarding the extent of the work that would be required to construct the proposed dwellings, it also makes clear that such an assessment does not apply to the application which is limited to consideration of the change of use under Q(a). I will adopt the same approach in this appeal.

6. In this case the Council has raised an issue solely in relation to the exclusion in paragraph Q.1(a) and I have no reason to conclude differently in terms of this being the only relevant exclusion for consideration. Furthermore, the submitted plans indicate that the site concerning the proposed change of use would relate to both the existing building and its curtilage.
7. Paragraph Q.1(a)(i) states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. An 'established agricultural unit' is defined in Paragraph X of the GPDO as agricultural land occupied as a unit for the purposes of agriculture.
8. Paragraph Q.1(a)(ii) is intended to deal with dormant use, such as where a building was not actually being used on 20 March 2013 but, when last used before that, it was used for agriculture. This has the effect that if the building was used for agriculture before 20 March 2013 and there has been no intervening or different use, the permitted development right under Class Q would still apply.
9. The appeal site is located off Bretforton Road and reached via a shared access track. It is adjacent to a small gypsy and traveller site. There are parking and turning areas to the north with a mown orchard to the south. The surrounding land is predominantly agricultural with a ploughed field to the west, shown on the location plan.
10. Previous applications for prior approval have been refused but the appellant asserts that the current application, which is the subject of this appeal, has addressed the previous reasons for refusal. The appellant advises that historically the land and buildings have been used for agricultural or horticultural purposes. He says that his late father owned and used the land and buildings for over 40 years to cultivate mainly vegetable crops such as asparagus and beans. According to the appellant, the rest of the land was rented to a local farmer to grow more cereal-type crops. The appellant advises that since 2011 the usable land to the west has been let to a farmer. The implication seems to be that this land was once used by his father, though it is not clear from the information supplied.
11. The building is fairly sizeable and constructed mainly of corrugated metal sheets with a double pitched roof and a side addition with a shallower roof. There was some machinery inside the building including lawn mowers, a 'bobcat' digger/excavator machine, a cement mixer, ladders, what appeared to be some older ploughing attachments, old tool boxes and tools and other implements. There were also other items such as timber and doors. Whilst some of the equipment would have agricultural uses other equipment and items could have construction or building uses. In any event, it is not clear how long those items and equipment have been stored in the building or that they were present at or before the relevant date.

12. Whilst the appellant has referred to the renting of land and the growing of vegetable crops as part of a business, no independent supporting evidence or documentation, such as, for example, accounts, invoices or rental agreements, has been provided to confirm that the building was used for agriculture in connection with a trade or business or that the site was solely for an agricultural use as part of an established agricultural unit. Consequently it remains unclear, what purpose the building served other than as a storage/workshop and what established agricultural unit it was part of on or prior to 20 March 2013.
13. An enforcement notice, served on the site in 2007, refers to the storage of non-agricultural vehicles and the siting of a paddling pool, a trampoline and a vegetable patch. Whilst the appellant refers to past enforcement issues as minor misunderstandings or relating to an adjoining site, the 2007 enforcement notice does relate to the site, according to the plan attached to it. Therefore, it does indicate some non-agricultural use at that time. The Council also refer to site visits in relation to the current and previous applications between 2014 and 2016, where non-agricultural vehicles and equipment were present. Photographs of the most recent visit in June 2016 have also been provided showing non-agricultural vehicles, building materials and scaffold boards.
14. Although, as the appellant contests, the site visits were after the relevant date of 20 March 2013, in combination with the 2007 enforcement notice and the lack of any alternative supporting documentation, it does bring into question whether the site was used solely for an agricultural use as part of an established agricultural unit on or before the relevant date.
15. The appellant has provided what appears to be part of a Council Officer's report dealing with a planning application for a traveller and gypsy site at Orchard Place, which the appellant advises adjoins the site. It includes an extract from a previous appeal decision dealing with a 2010 planning application relating to that site, where the Inspector, in describing its location, states: *'The existing caravans and structures at Orchard Place are located at around 60m – 90m from the road, adjacent to an existing agricultural barn and a nearby clump of trees. However, the additional caravan, chalets and utility blocks now proposed would be sited approximately 70m beyond the existing site and separated from it by a grass paddock'*. The appellant holds that the 'agricultural barn' referred to is the same building which is the subject of this appeal and that it supports his case.
16. The site which is the subject of the Orchard Place appeal would, from the description, appear to be to the south of the building which is subject to this appeal. Whilst the Inspector may have been referring to the same building, the building was being used primarily as a locational reference point and it does not imply any determination regarding the use of the building or whether it was part of an established agricultural unit. Therefore, I give it limited weight.
17. Paragraph W of the GPDO deals with the procedure for prior approval under Part 3. Section 3 states that the local planning authority may refuse an application where, in the opinion of the authority, *'the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.'*

18. Although the appellant has asserted the nature and previous use of the building and land, given the statements about the history of the site made by the appellant, it would be reasonable to expect there to be some documentation or other independent evidence to verify that the building was solely in agricultural use as part of an established agricultural unit on or before the relevant date. No such robust or persuasive supporting evidence or documentation has been provided.
19. Overall, the above factors lead me to conclude that insufficient evidence has been provided to confirm use in compliance with the relevant GPDO Class Q criteria.

Other Matters

20. The appellant and some members of the local community have referred to the need for affordable or smaller homes in the area. It has also been suggested that the proposal would be a good re-use of a redundant building. Whilst I note those views, they are not matters that are directly relevant or that can be taken into account when determining an application for prior approval under Class Q of the GPDO.

Conclusion

21. For these reasons, I conclude that insufficient information has been submitted to demonstrate that the proposal complies with the conditions, limitations and restrictions of the GPDO and therefore comprises permitted development. Accordingly, the appeal is dismissed.

Jonathan Tudor

INSPECTOR