



Appeal Decision

Site visit made on 22 May 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 21st June 2017

Appeal Ref: APP/J1915/W/16/3144108

Highfield Barns, Highfield Farm, Mangrove Lane, Brickendon, Hertfordshire SG13 8QJ

- 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 (General Permitted Development) (England) Order 2015 (the GPDO).
 - The appeal is made by Mr A Winer against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/1494/ARPN, dated 14 July 2015, was refused by notice dated 10 September 2015.
 - The development proposed is change of use of an existing agricultural use (poultry) building to Class C3 (dwellinghouse).
 - This decision supersedes that issued on 14 September 2016. That decision on the appeal was quashed by order of the High Court.
-

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 (General Permitted Development) (England) Order 2015 for the change of use of an existing agricultural use (poultry) building to Class C3 (dwellinghouse) at land at Highfield Barns, Highfield Farm, Mangrove Lane, Brickendon, Hertfordshire SG13 8QJ in accordance with the terms of the application Ref /15/1494/ARPN, dated 14 July 2015, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matter

2. The proposals define a curtilage, shaded in green on the submitted layout plan, beside and around the building for which the change of use is sought which is no larger than the area the building occupies. This accords with the interpretation given in paragraph X of the GPDO and meets the requirement in regard to curtilage for the proposal to be permitted development under Class Q.

Main Issue

3. The main issue is whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or when last in use prior to that date, such that the proposal would constitute permitted development under the GPDO.

Reasons

4. The appeal site is situated in the countryside adjacent to woodland to its south. Access is from Mangrove Lane to the north via a made-up private drive which runs between some existing housing up to a metal palisade gate entrance. Beyond the entrance the site is hard-surfaced and runs westwards serving an L-shaped group of three main buildings. The furthest building at the western end of the site, beyond which there was pasture land containing sheep, is the subject of this proposal. It is a rectangular building of a relatively low profile with timber walls and a corrugated sheeted, gently sloping pitched roof.
5. Class Q of the GPDO permits the change of use from an agricultural building to Class C3 (dwellinghouses), and the building operations reasonably necessary to achieve the conversion, other than as not permitted in criteria set out in the following paragraph Q.1 and subject to conditions contained in paragraph Q.2. The latter includes the requirement to apply to the local planning authority as to whether its prior approval is required.
6. The appeal arises from the Council's refusal of prior approval for the change of use sought made on the basis that there is insufficient evidence provided to establish the proposed development complies with the requirements of paragraph Q.1. This is in respect of development not being permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on (i) 20 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.
7. For the purposes of this part of the GPDO 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, 'agricultural use' refers to such uses and 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture and, for the purposes of Class Q, on or before 20 March 2013.
8. The appeal site was originally part of an animal feeds and health care research facility which ceased operation in 2002. In an appeal¹ in 2004 over conditions requiring the demolition of the buildings on this site, connected with the approval for conversion of nearby buildings to residential use, the Inspector referred to their nature and appearance as being wholly agricultural. The buildings were permitted to be retained and the Sworders sales particulars submitted by the appellant, with photographs of the Highfield Barns appearing empty and dated October 2009, refer to two timber redundant poultry buildings and a third agricultural building.
9. The appellant bought the site on 26 July 2010 and the evidence suggests quite clearly that it comprised a unit of land containing agricultural buildings rather than a site with any other use attached to it. The evidence presented is that the property is a registered smallholding and was insured as such since 15 July 2010 with the certificate to this effect submitted.
10. Following purchase the appellant proceeded to keep and raise livestock (chickens and pigs) on the land and within some of the buildings. Eggs were sold to local farm shops and to the general public under the enterprise title

¹ APP/J1915/A/03/1134591

Highfield Hens; the website domain name of which was registered on 30 July 2012. I can find no reason to disagree with the case made by the appellant that *Highfield Hens* was an agricultural business, the trade of which was to sell eggs produced on the holding and the point of lay chickens raised there.

11. Whilst not in the form of sworn affidavits there is written evidence supplied with the appeal. A letter dated 29 January 2015 from Yeats Ltd confirms that their Dallance Farm shop in Essex has been supplied free-range eggs by *Highfield Hens* from mid to late 2011. A letter dated 11 March 2015 from Frost Free Range Hens confirms that they had supplied the appellant with chickens, usually in 50 bird batches, on a regular basis since 'early 2013' onwards.
12. The appellant's accountants, IPS Consultancy Services, confirm in the letter of 25 January 2016 that they had prepared accounts for Highfield Barns and *Highfield Hens* covering the tax periods 2011/12 to 2014/15 showing a yearly increase in profit. This letter offers the view that the free range chickens, point of lay chickens and breeding/rearing of other animals all comprise the appellant's primary agricultural and sole trade from Highfield Farm.
13. There is one sworn declaration from Daniel Goulding dated 2 February 2016 to the effect that he was employed at Highfield Barns between September 2012 and March 2013 for duties including cleaning out chickens, cleaning eggs and dealing with telephone enquiries from customers coming to collect orders for these.
14. There is no dispute that the current use of the site is for agriculture and the Council has not contested the point made by the appellant that, since he acquired the site, several visits from its enforcement officer had failed to establish evidence of any alternative uses. On the balance of probability and based on the details provided I am persuaded that since purchasing Highfield Barns on 26 July 2010, as a site and buildings left over from a previous agricultural research facility, the appellant has used the site solely for agricultural purposes.
15. The appellant advises that the subject building was used to store chicken and pig feed, as well as hay storage. Although the appellant has not wished to provide detailed accounts revealing the turnover, sales and profits of the business I consider the evidence to show this site has operated as a trade or business and has not been in the nature of a recreational activity or hobby farm. Therefore the subject agricultural building would satisfy the interpretation used in paragraph X of the GPDO as one used for agriculture and which is so used for the purposes of a trade or business.
16. Highfield Barns is quite clearly, on the evidence presented and balance of probability, an established agricultural unit as, under paragraph X, this means agricultural land occupied as a unit for the purposes of agriculture. For the purposes of Class Q, this has been demonstrated to have been the case since before 20 March 2013. Therefore I consider that the site was used solely for an agricultural use as part of an established agricultural unit on and before 20 March 2013 and, as there is no further conflict with the remaining criteria of paragraph Q.1, the proposal would constitute permitted development under the GPDO.

Other matters

17. Although not part of its decision the Council's statement had covered at some length its view that, had the development been considered permitted under GPDO Class Q, it would not have met the condition for prior approval in paragraph Q.2 over whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses). As the Council is not contesting this re-determination this issue is addressed briefly.
18. Since making its statement that the Council's challenge to the High Court over a separate planning appeal decision to grant approval for the conversion of an agricultural barn to a single dwelling under Schedule 2, Part 3, Class Q of the GPDO was dismissed on 9 March 2017². This decision referred to the purpose of the introduction of the Class Q to increase the supply of housing through the conversion of agricultural buildings which by definition will very frequently be in the open countryside. Whilst GPDO paragraph W(10) (b) requires regard be given to the National Planning Policy Framework when considering a prior approval application it was determined this cannot be applied so as to frustrate the purpose of identifying the class of permitted development in the first place.
19. Having considered this ruling, and the advice in paragraph 108 of the Planning Practice Guide³ that the Class Q permitted development right does not apply a test in relation to sustainability of location, I am satisfied that the location and siting of the building would not make it impractical or undesirable to change use to a dwelling.
20. Consideration has been given to the further matters raised by interested parties to the original application and at the appeal stage. However, none of these alter my view that the proposal would be permitted development under the provisions of Class Q of the GPDO.

Conditions

21. Consideration has been given to the conditions suggested by the Council. Other than the conditions already deemed through the GPDO it is necessary in the interests of certainty that a condition specifies the plans to which the approval is granted. In the interests of remediating any contamination found as a result of the development a condition requiring this is also necessary.

Conclusion

22. For the reasons given, having taken into consideration all other matters raised, I conclude that the appeal should be allowed.

Jonathan Price

INSPECTOR

² East Hertfordshire DC v Secretary of State for Communities and Local Government [2017] EWHC 465 (Admin)

³ Paragraph: 108 Reference ID: 13-108-20150305

Schedule of Conditions
Appeal Ref: APP/J1915/W/16/3144108
Highfield Barns, Highfield Farm, Mangrove Lane, Brickendon, Hertfordshire
SG13 8QJ

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 15/176-01 location and site plan, 15/176-03 floor/elevation existing and 15/176-04 floor/elevation proposed.
- 2) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 48 days of the report being completed and approved in writing by the local planning authority.

---End of Conditions---