
Appeal Decision

Site visit made on 18 July, 2017

by C. Jack, BSc (Hons) MA MA(TP) MRTPI

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

Decision date: 17th August, 2017

Appeal Ref: APP/H2265/W/17/3172966

Land at Little Peppyns Orchard, Higham Lane, Tonbridge, Kent, TN11 9QP

- 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 Shaun Turner against the decision of Tonbridge & Malling Borough Council.
 - The application Ref: TM/16/03627/PDVAR dated 2 December, 2016 was refused by notice dated 26 January, 2017.
 - The development is described as prior notification for proposed change of use of agricultural building to a dwelling/house (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the site address given on the application form as Pippins Orchard, and other permutations on various application documents, it has become apparent from other information provided in relation the appeal, and from my site visit, that the proposal relates to Land at Little Peppyns Orchard, as specified above.
3. The application is made under the provisions of Schedule 2, Part 3, Class Q of the GPDO¹. Planning Practice Guidance (PPG) advises that the starting point for Class Q is that the permitted development rights grant planning permission, subject to the prior approval requirements. However, it is first necessary to determine whether the proposal constitutes permitted development. Class Q states that development consisting of: Q(a) a 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 (dwelling/houses) of the Schedule of the Use Classes Order²; and Q(b) building operations reasonably necessary to convert the building, is permitted development.
4. Where permitted development is proposed under Class Q(a) together with Class Q(b), it is subject to the condition under paragraph Q.2 (1) that before beginning the development, an application must be made to the local planning authority for a determination as to whether the prior approval will be required as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

5. The Council refused the application for prior approval because it considered that the building does not fall within the definition of an 'agricultural building' as set out in Schedule 2, Part 3 of the GPDO and, therefore, that the proposal does not constitute permitted development. Consequently, the Council considers that the provisions of Q.2 (1) do not apply, and it did not determine upon them.
6. The Council refused a previous similar application³ on the basis of insufficient evidence to demonstrate that the building falls within the definition of an agricultural building or, therefore, that the proposal constituted permitted development under Class Q. That decision was upheld at appeal⁴.

Main Issues

7. Having regard to the background above, I consider that the main issues are:
 - Whether the proposal would be permitted development under Class Q of the GPDO, with particular regard to the requirements of paragraph Q.1 (a); and
 - If so, whether or not prior approval is required and the proposal would be acceptable in relation to the matters sets out in paragraphs Q.2(1)(a) to (f) of the GPDO.

Reasons

8. The appeal building is an unassuming single-storey timber framed, externally rendered, structure with corrugated metal sheet roofing and various windows and doors, which looks similar to a timber barracks building. The building is set a short distance into the wider holding from the access onto Higham lane, and adjacent to an area of hardstanding. At the time of my visit part of the building was being used for storage of a number of plastic apple crates and a modest quantity of bottles of juice. The rest of the building was being used to store a 4x4 vehicle, bags of apparently pre-prepared kindling wood, equipment that appeared to be for sawing, and other miscellaneous items.

Whether the proposal would be permitted development

9. Changes of use to residential under the provisions of Class Q are subject to limitations, including Q.1 (a) that development is not permitted if '*...the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 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*'. The definition of 'agriculture' in Section 336(1) of the TCPA⁵, amongst other things, includes horticulture, fruit growing, seed growing, the breeding and keeping of livestock, the use of land as grazing land, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.
10. Paragraph X of Schedule 2, Part 3 of the GPDO sets out points of interpretation for the purposes of Part 3, including that an 'agricultural building' means a building used for agriculture and which is so used for the purposes of a trade or business. It further advises that an 'established agricultural unit' means

³ Ref TM/15/03756/PDVAR

⁴ Ref APP/H2256/W/16/3146831

⁵ Town and Country Planning Act 1990 (as amended)

agricultural land occupied as a unit for the purposes of agriculture; and that for the purposes of Part 3 permitted development rights, the site is defined as 'the building and any land within its curtilage'. In this case the building and the curtilage immediately around it are outlined in red on the site location plan. Similarly to the previous appeal, a key consideration in this case is therefore whether the building was used solely in an agricultural use, for the purposes of a trade or business and as part of an established agricultural unit on the material date of 20 March, 2013 or when it was last in use.

11. The case before me relates to essentially the same proposed development as the previous appeal, with additional pieces of evidence including a witness statement from the appellant, documents relating to the removal of fruit trees and the installation of fencing, photographs of crated apples and bottles of apple juice, statements and a petition relating to the sale and purchase of items including fruit, logs, Christmas trees, and juice, and financial statements for Action Paintball Ltd, the appellant's off-site paintballing business.
12. The witness statement sets out that the building forms part of a small land holding of about 5ha, of which about 0.2ha is orchard and much of the remainder is grassland from which hay is periodically taken. It is stated that apples and fruit were harvested each year, some of which were sold at the gate and some were sent for pressing to juice. It is further stated that on the material date the building contained apple crates, bottles of juice, farm machinery, tools and maintenance equipment. Around 800 bottles of juice per year are stated to have been produced, of which the processors kept 50% and the appellant sold some remaining bottles as an ancillary service to his paintballing business. Production is stated to have been scaled back between 2014 and 2016. It is not clear what volume of apples were produced in any specified year, including 2013, or the volume or specific timeframe of sales of juice through Action Paintball, including because this is not explicit in the accounts.
13. No accounts expressly in relation to agricultural activity appear to have been kept but the appellant maintains that the growing of apples at the site resulted in the agricultural trade of juice through Action Paintball and at the gate of the land holding, together with some pick-your-own fruit sales, none of which appears to have been formally documented. Statements and the petition from customers and Action Paintball staff indicate that such sales did take place but, again, details relating to the timeframe and the volume of sales are unclear. Moreover, the juice pressing company, Core Fruit Products, advises simply that it processed 'a quantity' of apples from the appellant's orchard in the years 2010 to 2012, thus pre-dating the material date.
14. 'Fruit growing' is plainly within the s336(1) definition of agriculture. That definition is not exclusive, but the storage of machinery and apple crates used in the growth and harvesting of the fruit would be incidental to the use of the orchard land for agriculture. It would appear that there was an agricultural trade or business, because fruit has been grown for a commercial purpose, albeit the scale of that trade or business was very modest. I note that nowhere in the relevant legislation or the PPG is there a requirement for agricultural trade or business in relation to Class Q to be of a particular scale, intensity, turnover or profitability. Nevertheless, I am of the view that the separate paintballing business would not have a functional relationship with agriculture. Therefore, while the retail sale of bottled apple juice at Action

Paintball may be considered incidental to the paintballing, the storage of goods at the appeal site for sale at Action Paintball would not amount to an agricultural use of the building, even though the goods for sale (the bottled apple juice) were made from agricultural produce from the land holding.

15. Sales of the bottled juice at the gate may be considered incidental to the agricultural use of the land. Such sales volumes appear to have been very modest and, while the evidence suggests this was related to storage in the appeal building, it does not clearly link such sales to the use of the building on the material date. Moreover, it is a significant part of the appellant's case that a proportion of the juice storage was connected with the sale of the juice at Action Paintball. I therefore consider it most likely that the building was put into a mixed use, being, at least in part, used for storage related to a non-agricultural business. Class Q expressly requires that the site, in this instance the appeal building, was used *solely* for an agricultural use on the material date. On the basis that this was not the case, the proposed change of use to residential would not be permitted development.
16. In light of this, based on the evidence before me, observations during my visit, and the balance of probabilities, I am not satisfied that the site was used solely for an agricultural use on 20 March, 2013. There is no significant evidence before me that the building was not in use at that date. It follows that, on the balance of evidence, I cannot conclude that the site was used solely for an agricultural use as part of an established agricultural unit as required by paragraph Q.1(a).
17. In reaching this position, I have considered the other evidence provided by the appellant, none of which leads me to a different conclusion about the use of the appeal building. I note that the area of orchard was larger until around 2009, but I am not persuaded that this significantly affects the purported use of the building on the material date. There is no significant evidence before me that sales of other items such as logs, fruit, hay or Christmas trees, either directly from the holding or through Action Paintball as relevant, involved the use of the building on the material date. Indeed, some of these items may not fall within the definition of agriculture, particularly if they were imported onto the holding for processing and resale.
18. Together with the equestrian use of part of the holding between 2010 and 2014, which included the stable block and menage there, this would also call into question whether the holding constituted an established agricultural unit at the material date. I am of the view that the evidence before me is not sufficient to draw a definitive conclusion on this point. However, even if the holding was an established agricultural unit at the material date my findings in relation to the use of the appeal building would not be altered.
19. Furthermore, I can see no manifest link between the fencing procured from a contractor and any agricultural use of the building, or the holding, at the material date. The outdoor photograph of crated apples is dated October 2012, and the photograph of bottled juice is undated, so these carry very little weight in relation to the use of the building on the material date. The lack of other buildings available for agricultural purposes at the holding also does not in itself demonstrate that the appeal building was in agricultural use at the material date.

20. Taking all of the above into account, I must conclude that the change of use would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO and so is not development permitted by it.

Prior approval

21. Given my finding that the change of use would not be development permitted under Schedule 2, Part 3, Class Q of the GPDO, there is no need for me to consider the prior approval matters as this would not alter the outcome of the appeal.

Other Matters

22. The site lies within the Green Belt however, Green Belt policy as set out in the National Planning Policy Framework is not a relevant consideration for development under Class Q.

Conclusion

23. For the reasons given, and based upon the evidence before me, I conclude that the proposal does not constitute permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed under the prior approval provisions set out.
24. Therefore, the appeal should be dismissed.

Catherine Jack

INSPECTOR