The Planning Inspectorate

Appeal Decision

Site visit made on 22 August 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 05 October 2017

Appeal Ref: APP/H1840/W/17/3173481
Barn, Bowers Hill Nursery, Bowers Hill, Badsey, Evesham, Worcestershire WR11 7HG

- 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 Roger Peats against the decision of Wychavon District Council.
- The application Ref GPDQ/16/02362/GPDQ, dated 28 September 2016, was refused by notice dated 2 December 2016.
- The development proposed is a barn conversion into three residential units.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning Practice Guidance (PPG) advises that the starting point for Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) is that the permitted development rights grant planning permission, subject to the prior approval requirements. However, it is necessary to determine whether the proposal falls within permitted development. Class Q of the GPDO 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 (dwellinghouses) of the Schedule of the Use Classes Order[1]; and Q(b) building operations reasonably necessary to convert the building, is permitted development.

3. Where development is proposed under Class Q(a) together with Class Q(b), it is permitted 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. An assessment relative to prior approval requirements under paragraph Q.2(1) is only necessary if it is firstly determined that the proposal would be permitted development under Class Q.

4. The Council refused the application for prior approval because it considered that the evidence submitted demonstrated that the last agricultural use of the

[1] The Town and Country Planning (Use Classes) Order 1987 (as amended)

holding was in 1998. That the building was being used for domestic storage in January 2016, was vacant in October 2016 and that there is no evidence of any current agricultural use of the site.

5. A previous prior approval application[2] under Class Q of the GPDO was refused by the Council in February 2016. That application was refused as the Council considered that in the absence of detailed evidence to demonstrate otherwise, the required structural works necessary to convert the building to three dwellinghouses could not be classed as only reasonably necessary. They also considered that that the building was not presently being used for agricultural purposes and evidence indicated the building had not previously been used for agricultural purposes on 20/03/2013 or as its last use.

6. There is no dispute between the parties that the current proposal for change of use and operational development would otherwise meet the requirements of Schedule 2, Part 3, Class Q, paragraphs Q.1(b)- (m) of the GPDO. Based on the evidence before me, together with my observations of the building and its surroundings, I have no reason to take a different view in terms of those Class Q requirements.

Main Issues

7. Taking into account the above, the main issues are:

   - whether the proposal would be permitted development, with regard to whether the requirements of Class Q of the GPDO in terms of paragraph Q.1 (a) would be met, 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

Whether the proposal would be permitted development

8. Paragraph Q.1 (a) is clear 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 20th 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'.*

9. '*Agriculture*' as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended) includes, amongst other things, horticulture, fruit growing and seed growing. Schedule 2, Part 3, paragraph X of the GPDO further sets out that for the purposes of Part 3 permitted development rights, 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, and 'agricultural use' refers to such uses.

10. The appeal site comprises a detached building and its curtilage and forms part of the larger site known as Bowers Hill Nurseries. The building consists of a steel portal frame with profile sheeting walls and roof. Within the larger land holding there are a number of substantial glasshouses, a dwelling and a static caravan. There are a number of dwellings adjacent to the overall site which front onto Bowers Hill.

[2] GPDQ/15/03194/GPDQ

11. The appellant has submitted a timeline to identify past owners of the site and the use of the land and buildings at various points in the past. There is no dispute between the parties that in 1998 the overall site including the appeal site was in the ownership of a Mr Tustin and that he ran a horticultural nursery on the site. The site remained in his ownership until 2004 and in 2001 the reserved matters relating to a 1998 outline planning permission for an agricultural worker's dwelling on the site were approved.

12. The Council have not been able to determine what evidence was submitted to support that application and evidence from a neighbour states that the appeal building was used to store items to be sold at auction houses between 1999 and 2004. However, it is likely that as planning permission was granted for an agricultural worker's dwelling that sufficient evidence was produced to indicate that the site was being used for an agricultural use. Nevertheless, that does not indicate that the appeal building was solely used for agricultural purposes at the time that the reserved matters were approved.

13. The overall site was owned by a Mr and Mrs Howard from 2004 until 2015. There is no evidence before me to indicate that between those dates and more importantly on the 20 March 2013 that the building was used solely for an agricultural use. The appellant has stated that Mr and Mrs Howard have confirmed that the overall site was not used for business purposes. However, there is no detailed evidence, such as a statutory declaration from Mr and Mrs Howard, as to whether the appeal building was used on the 20 March 2013 and if so as to what use it was in.

14. During the time that the appeal site was owned by Mr and Mrs Howard the Council's evidence states that in 2005 and 2007 there were inconclusive enforcement investigations into the operation of a car repair business from within the appeal building. Nevertheless, the Officer Report for the previous prior approval application states *"Records on file from the officer dealing with that investigation state that the buildings were not being used for any business purposes and that the only repairs taking place were that of the owner and his son. It does not confirm or deny whether those vehicle repairs were related to an agricultural use however."* Furthermore, a number of the residents of the adjacent dwellings have stated that the building has been used for car repairs, as a car workshop and for storage for many years.

15. The appellant has owned the overall site since 2015 and the Council has stated that the previous prior approval application form stated that the previous use of the barn was for the storage of 'general farm junk'. Photographs provided by the Council dated 1 July 2016 indicate that the building was being used for the storage of general items, a car and a piece of machinery. The appellant considers that the general items being stored were ancillary to the agricultural holding as they came from the dwelling on the site. He has also stated that the car was being used to jump start a tractor which had a flat battery.

16. At the time of my site visit the building was mainly empty except for a few items of machinery, pallets, plant pots and empty shelving units. The glasshouses adjacent to the appeal building were in use as plants were being grown within them. There were a number of decoratively planted hanging baskets hung around the site and a notice at the entrance of the site advertising items for sale. I note that it is the intention of the appellant to continue to renovate the glasshouses and to establish a horticultural business

at the site and that there is a water tank beneath the appeal building that is used to irrigate the plants within the glasshouses. However, to be considered as an agricultural use the appeal site has to be used as a trade or business. No detailed evidence such as accounts or documentation that would evidence a trade or business use has been submitted.

17. Moreover, the appellant's use of the site is after the relevant date of 20 March 2013. Taking into account all of the above, it remains unclear if the appeal building was in use and if it was in use what that constituted on that date. Paragraph Q.1(a)(ii) is intended to deal with a 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.

18. Before that date there is no dispute that the site and appeal building were solely in agricultural use as part of an established agricultural unit in 1998. However, taking into account all of the above and on the balance of probabilities I consider that between 1998 and the 20 March 2013 the use of the appeal site including the building was not dormant.

19. I have carefully considered all of the evidence and it is for the appellant to prove on the balance of probability that the building was used solely for an agricultural use as part of an established agricultural unit in compliance with Paragraph Q1(a). However, without persuasive supporting evidence I conclude that there is insufficient information to demonstrate that the relevant GPDO conditions, limitations and restrictions have been met in respect of the agricultural use of the building and therefore is not development permitted by it.

Prior approval

20. Given my conclusion 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 it would not alter the outcome of the appeal.

Conclusion

21. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is, therefore, dismissed.

D. Boffin

INSPECTOR