
Appeal Decision

Site visit made on 21 November 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: 27 November 2017

Appeal Ref: APP/J1860/W/17/3178383

Agricultural Building, Grid Ref E385292 N247689 (OS 8528 4772), Main Road, Kempsey, Worcestershire WR5 3NG

- 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 Mrs J Wallis against the decision of Malvern Hills District Council.
 - The application Ref 17/00130/GPDQ, dated 23 January 2017, was refused by notice dated 7 April 2017.
 - The development proposed is change of use of agricultural building to dwellinghouse.
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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 (as amended)(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 Order¹; 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.
4. The Council considers that insufficient evidence has been submitted to demonstrate that the last use of the building was used as ancillary to any agricultural/horticultural activities and as such the proposal would not comply with Class Q.1.(a). It also considers that the proposal would not accord with

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

Class Q(b) by reason of consisting of building alterations other than those permitted under paragraph Q.1(i).

5. 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)- (h) and (j)-(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.
6. I have taken the description of development from the Council's decision notice.

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 Schedule 2, Part 3, Class Q in terms of paragraph Q.1 (a) of the GPDO would be met; and
 - whether the proposal would be permitted development, with regard to whether the requirements of Schedule 2, Part 3, Class Q(b) in terms of paragraph Q.1(i) of the GPDO would be met; and
 - if permitted development and not excluded by Q.1, 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

Paragraph Q.1(a)

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 building comprises a detached building with lean-to extensions. The submitted plans indicate a curtilage to that building and the appellant's overall land holding surrounding this building.
11. There is little evidence provided by the appellant in relation to the use of the building and the overall holding and that evidence is contradictory. The application form states that the building was used as a packing station for flowers and vegetables on the 20 March 2013. However, it also states that there has been no use of any agricultural permitted development rights for the past 10 years.
12. Nonetheless, the appellant's statement of case indicates that the building was put on the land in 1970 as a packing station for cut flowers and mixed vegetables. It also states that the appellant bought the site in 1991 and that 3 polytunnels were erected on the land that same year. Mr Wallis suffered a heart attack and had a triple bypass in 2004 and since then the building and

land have not been used. She goes onto state that her son stored a wardrobe in the building for 3 weeks only.

13. The Council's Officer Report cites 2 letters received from third parties but I have not been provided with copies of those letters and as such I give them little weight. The Council has provided a letter from 1994 in relation to a planning application for a dwelling on the appeal site. Within that letter it states that Mr and Mrs Wallis were growing stick beans at Sandylane Nurseries, which appears to have been the name allocated to the appeal site at that time. It also states that the author of the letter would not expect Mr and Mrs Wallis to make a reasonable living on a sustained basis from the holding.
14. A representative from the Council visited the site in relation to a previous prior approval notification on the appeal site and observed that the building was being used for domestic storage and that there was no clear agricultural use. The Council have provided photographs of that storage that they state were taken in November 2016.
15. However, as this visit took place after the relevant date of 20 March 2013, I give limited weight to these observations. During my site visit I noted that the appeal building and site appeared to be largely unused with some storage of pallets, boxes and general equipment that could be used in connection with an agricultural/horticultural use.
16. 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 the relevant date of 20 March 2013. 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. However, there is little evidence before me to indicate that the use of the building before that date constituted an agricultural use as defined within Schedule 2, Part 3, paragraph X of the GPDO.
17. I have carefully considered all of the evidence. 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 Q.1(a). Without any 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 site.

Paragraph Q.1 (i)

18. Paragraph Q.1(i) of the GPDO states that development is not permitted by Class Q if the development under Class Q (b) would consist of building operations other than: the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling.
19. Further guidance in respect of this matter is provided within the PPG. The PPG states that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

20. The appeal building is constructed from precast concrete wall panels and corrugated roof sheets. It is located on a concrete floor slab and there are large double doors on the south elevation. The lean-to extensions would be removed as part of the proposal. It was clear from my observations at the site visit that the timber structure of the roof and wall plate was not substantial and that it had been affected by water ingress.
21. The structural appraisal submitted with the application and the additional letter from the Structural Engineer state that *'the roof structural members, including purlins and roof trusses, are not considered suitable for reuse'* but that the *'existing roof members could be retained with additional structure added to provide adequate support for a 'domestic' type roof'*. It is apparent that the existing roof structure would be insufficient without new structural elements to take the loadings from the external works to provide for the proposed residential use.
22. In order to benefit from the permitted developments rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must only involve building operations reasonably necessary to convert the building in accordance with the definition at Q(b) and Q.1(i). Based on the evidence before me it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q.
23. I conclude that, based on the evidence before me, the proposed change of use would not satisfy the requirements of Schedule 2, Part 3, Class Q(b) of the GPDO, having regard to the associated guidance within the PPG, and therefore is not development permitted by it.

Prior Approval Matters

24. Given my conclusion that the proposal would not be development permitted under Schedule 2, Part 3, Class Q(b) 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.

Other Matters

25. The appellant has referred to recent prior approval applications at Old Woodhall Farm. However, I do not have the full details of those approvals and the Council has stated that the building forms part of an agricultural holding known as Old Woodhall Farm and the applicant provided evidence of an agricultural use. It also states that a prior approval application on that site was refused but not in connection with its agricultural use. The appellant has not disputed the Council's evidence and as such I have no reason to dispute it. Consequently, it would appear that the applications cited are not directly comparable to the case before me and I give them little weight. In any case, I am required to determine the appeal on its individual merits.

Conclusion

26. For the reasons given above I conclude that the proposal is not permitted development and that the appeal should be dismissed.

D. Boffin

INSPECTOR