



Appeal Decision

Hearing Held on 14 March 2018

Site visit made on 14 March 2018

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2018

Appeal Ref: APP/B1930/W/17/3180423

Barn North of Manor Road, Weathampstead AL4, 8JB

- 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 Copsehill Investments against the decision of St Albans City & District Council.
 - The application Ref 5/17/1211, dated 24 November 2016, was refused by notice dated 21 June 2017.
 - The development proposed is the change of use of agricultural barn to class C3 (residential) to create one, three bedroom dwelling.
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Decision

1. The appeal is allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of agricultural barn to class C3 (residential) to create one, three bedroom dwelling at Barn North of Manor Road, Weathampstead AL4, 8JB in accordance with the terms of the application Ref 5/17/1211, dated 24 November 2016, subject to the following condition:
 - 1) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.

Main Issue

2. The main issue is whether or not the site was used solely for an agricultural use as part of an established agricultural unit, having regard to the provisions of Schedule 2, Part 3, Class Q, paragraph Q.1 (a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

3. The appeal building is detached and single storey. It comprises a metal and timber frame. The walls are brown coloured profiled metal sheet and the roof is made out of corrugated fibre cement panels. It is located on a slightly reduced ground level relative to its immediate surroundings and related to a large, open and irregular shaped/linear area of undulating land enclosed by a mix of field edge fencing and trees. Gardens belonging to residential dwellings lie immediately south. The building is accessed via a private unmade track that runs north from Manor Road.
4. The Council's case in respect of the appeal scheme does not relate to the use of the building or the land surrounding it. Indeed, this seems to be common ground between the main parties. Their concern centres around doubt as to whether the site is or was an established agricultural unit or part of one.
5. The site to which the building relates is, according to the appellant, in the region of 11 acres. I have no reason to doubt this nor is there any evidence to the contrary. It is shown enclosed by a red line and labelled as the established agricultural unit on an A4 plan submitted to the Council prior to the appeal. This 11 acres makes up the site as I observed it on my site visit, shaped and enclosed as I have described it above. The field is used for the production of hay. The building for storage of it. Evidence including the type of the grass coverage of the wider field and remnants of hay inside the building corroborates this. The Council did not disagree.
6. The parcel of land does not have any formal registration such as a holding number. The Council argued that there was no formal definitive documentation to prove beyond the doubt in their mind that the site was part of an established agricultural unit. The appellant stated that they had discussed the matter of acquiring a holding number with DEFRA who had advised that one of the main purposes of such was to track livestock. Since animals were not kept as a matter of course, it made the establishment of a number unnecessary. Holding numbers are not, it would seem from the evidence and discussions at the hearing, mandatory.
7. The evidence before me includes a signed declaration from an individual who uses the aforementioned 11 acre site for hay production and stores it in the barn. Further information explains that this individual also farms other land locally, but the site in question here does not form part of other operations that take place elsewhere. The individual is a tenant insofar as he occupies and operates the land and the building. For agricultural purposes. They are not however registered as such. There is no formal agreement in place and they rent on an informal basis. The individual is not therefore a tenant in the legal sense.
8. For the reasons I have set out in paragraph 7, I do not consider that the appellant's submission of an Agricultural Holdings Certificate (AHC) which confirms the site is not part of an agricultural holding to be prejudicial to their case. Specifically since the holdings certificate confirms whether a given site might be an agricultural holding which in the registration sense the site is not. In addition, whilst there is an occupier, they are so informally and not a tenant in the legal sense. The information on the AHC is therefore correct.

9. There is a distinct difference in my mind between a holding and a unit for the purposes of the GPDO. Whilst I accept that a holding number may have added further documentary credence to the appellant's assertions about the site, it would not have had the effect of changing what the building or the land it is sat upon is used for. Indeed, paragraph X of Part 3 of the GPDO clarifies what is to be taken as an established agricultural unit and states that it means agricultural land occupied as a unit for the purposes of agriculture. The use of the land for the production of hay and its storage in the building concerned are both agricultural operations. The GPDO does not set out limitations on size of a unit or indeed whether or not it can be part of a wider operation.
10. In essence, there is nothing compelling in the evidence, nor arising from discussions at the hearing, that would alter my view that the 11 acres of land on which the building is located is land occupied as a unit for the purposes of agriculture. I cannot see a convincing case that the 11 acres itself cannot be a unit of its own for the purposes of the GPDO.

Other Matters

11. There are a number of representations before me that express concern over the effect of the proposed development on the Green Belt and that granting approval may set a precedent. However, it is important to clarify that the appeal before me is with regard to a notification for prior approval. In simple terms, the notification seeks confirmation as to whether the proposed development would comply with certain legislative provisions. Legislative provisions which relate to development that would be permitted without the need for express planning permission. The broader planning matters to consider as part of that process do not extend to the Green Belt. As to matters of precedent, each proposal, either under the permitted development regime or one that seeks express planning permission, is considered on its own merits and with regard to the particular circumstances of the case.
12. Local residents are also concerned with the suitability of the access to the building which is currently an unmade track. I have noted this in my findings. Given that the track would be a means to access a single dwelling I do not consider its use to be such that it would have a detrimental effect on the safe use of the public highway. Indeed, the Council's highways advisors at Hertfordshire County Council did not object to the proposed development. There is nothing further (that is sufficiently compelling) before me that would convince me to take an alternative view.
13. My attention has been drawn the case known as Hibbitt¹. This case concerns a judgement that sought to establish a distinction between what may be considered a conversion for the purposes of the GPDO and a rebuild project. I note the findings of that judgement. However, the capability of the building to change its use in the context of the physical works is not an issue before me as part of this appeal. The Council made clear in their evidence consideration of this issue and no further contrary evidence has been provided such that I would have a reason to disagree.

¹ Hibbitt v Secretary of State for Communities and Local Government (2016) EWHC 2853 (Admin)

Conditions

14. It would not be appropriate to require that development is commenced within a specified period given the provisions of Schedule 2, Part 3, Class Q, paragraph Q.2 (3) of the GPDO. The external treatment is shown on the plans that form part of the application made to the Council. No other details have been submitted such that this would need clarifying by imposing a condition. In any event, the siting and design have been considered as part of the prior approval process and deemed acceptable by the Council. I have no reason to disagree.
15. The Council have suggested a condition which would effectively legislate for any unexpected contamination discovered during on site works. I note that investigation and survey work was undertaken in accordance with the requirements of the conditions of Class Q which the Council confirmed have been considered by their Environmental Health department. Whilst there does therefore not appear reasonable grounds to impose conditions requiring further investigation work, it seems prudent to impose the condition suggested by the Council to cover any matters that may be discovered and previously unknown during works. Mainly given the previous agricultural use. The condition would only bite for enforcement purposes should any unexpected contamination be found and is worded to reflect such.

Conclusion

16. Taking into account the above, I am satisfied that it has been adequately demonstrated that the site was used solely for an agricultural use as part of an established agricultural unit, having regard to the provisions of Schedule 2, Part 3, Class Q, paragraph Q.1 (a) of the GPDO. Whilst have regard to all other matters raised, and subject to the condition also set out above, the appeal is therefore allowed.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Gary Selvidge

Appellant

Mr Richard Murray BA (Hons) Dip TP MRTPI

Murray Planning Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Taylor BA (Hons) Dip TP MRTPI

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DOCUMENTS SUBMITTED AT THE HEARING:

- Two page letter from Howkins and Harrison regarding the purpose and application of Agricultural Holdings Certificates, County Parish Holding Numbers and Rural Land Registry Plans and Single Business Identification Numbers. Submitted by the appellant.