



Appeal Decision

Site visit made on 5 November 2018

by Rachel Walmsley BSc MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2018

Appeal Ref: APP/H1840/W/18/3200644

Blue Gecko Plant Centre, Tewkesbury Road, Eckington, Worcs WR10 3DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, 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 Julian Harvard against the decision of Wychavon District Council.
 - The application Ref 17/02313/GPDQ, dated 14 November 2017, was refused by notice dated 10 January 2018.
 - The development proposed is described as "change of use of horticultural building to residential (C3). Refer to drawing No PA/01 & 02 & Planning Statement."
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of horticultural building to residential (C3) at Blue Gecko Plant Centre, Tewkesbury Road, Eckington, Worcs WR10 3DG in accordance with the application ref 17/02313/GPDQ made on 14 November 2017.

Procedural matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), under Article 3, Schedule 2, Part 3, Class Q require the local planning authority to assess the proposed development solely on the basis of a change of use from a use as an agricultural building to a use falling within Class C3, or, as in this case, a change of use and building operations that are reasonably necessary for the conversion, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. Notwithstanding the description of development set out in the banner heading above, the proposed development would comprise a change of use and operational development, as detailed on drawing PA/02 Rev A, and as may be permitted under Article 3, Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The Council dealt with the proposal on this basis and so shall I.

Main Issues

4. The main issues are: whether the proposed development would be permitted by the GPDO, with regard to the provisions of Part 3, Class Q, paragraph

Q.1(a) and, if so, whether prior approval should be granted for the proposed development.

Reasons

Agricultural use

5. Paragraph Q.1 of Part 3 of the GPDO provides that development is not permitted by Class Q if (a) 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.
6. The site, as shown edged in red on the submitted plan, is drawn tightly around the appeal building. There is no dispute that the building stands within a holding which is in agricultural use, namely horticulture. I am satisfied that the building is or was part of an established agricultural unit. The dispute between the main parties is whether the building was solely used for agriculture on the relevant date.
7. Neither party has provided decisive evidence to show whether or not the building was solely in agricultural use on 20 March 2013. However, the appellant has submitted photographs which show the building in use as a shop in 2011. It seems that this was the last use, and so it does not matter if the building fell vacant during or before 2015. So, there is compliance with paragraph Q.1(a)(ii), so long as the shop was an agricultural use.
8. The use of a building as a farm shop would normally be considered incidental or functional to an agricultural use, unless so much of the produce for sale is imported that there is a separate retail use. In this case, the evidence is that the shop was used to sell garden related gifts, ornaments and greetings cards together with plants and other garden related products from the holding. Whilst there were some imported goods for sale the Council has not shown that these were not incidental to the products sold at the shop. Instead, based on my reading of the photographs and the appellant's evidence, imported goods were sold to supplement the income from plants and other such garden items. I find, therefore, that, as a matter of fact and degree, the shop was incidental to the agricultural use of the holding that it stood upon.
9. I conclude that the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or, if not in use on that date, when last in use. Therefore paragraph Q.1 (a) is satisfied and the proposed development would be permitted under Article 3, Schedule 2, Part 3, Class Q of the GPDO.

Prior approval matters

10. The Council accepts, and I am satisfied, that the details submitted by the appellant in respect of transport, highway and noise impacts of the development, contamination and flooding risks, the location, siting, design and external appearance of the building, as required under paragraph Q.2(1) are acceptable. The same applies in respect of the consultation exercise undertaken in accordance with Part 3, paragraph W. It follows that prior approval should be granted.

Conditions

11. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of 3 years starting with the prior approval date, so it is not necessary to impose a separate condition to the same effect. The GPDO generally provides that a 'plans' condition should only be imposed where this would be necessary to ensure certainty, which I have not found to be the case.

Conclusion

12. For the reasons given above, I conclude that the appeal is allowed and prior approval is granted.

R Walmsley

INSPECTOR