



Appeal Decision

Site visit made on 9 July 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 18 July 2019

Appeal Ref: APP/R1010/W/19/3223115

Hickinwood Barn, Hickinwood Lane, Clowne, Chesterfield S43 4AE

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Shaun Drury (Hunts Contractors Limited) against the decision of Bolsover District Council.
 - The application Ref 18/00425/DETFLEX, dated 7 August 2018, was refused by notice dated 1 October 2018.
 - The development proposed is 'notification for prior approval for a change of use of an agricultural building to commercial (B1) use'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development description set out in the banner heading above is taken from the appellant's appeal form rather than from the original application form as the latter lacks a detailed description of what is proposed. I have determined the appeal on the basis of the description set out above.

Main Issue

3. The main issue is whether or not the proposed development would constitute permitted development in respect of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the Order).

Reasons

4. Class R of the Order permits development consisting of a change of use of an agricultural building to a use falling within one of a number of particular use classes including, as is proposed in this instance, a commercial use falling within Use Class B1. Paragraph R.1 sets out the circumstances in which development is not permitted by Class R.
5. This matter has previously twice been considered by the Council. In both instances the proposals, submitted under the provisions of Part R of the Order, were dismissed on appeal¹. The Inspectors in each case concluded that it had not been adequately demonstrated, on the evidence before them, that the

¹ APP/R1010/W/16/3149755 and APP/R1010/W/17/3171022

- building was in use as part of an established agricultural unit on 3 July 2012 instance or, if not in use at that time, was in such use when it was last in use.
6. The most recent of those appeals² (the 2017 appeal) was accompanied by two affidavits. Those affidavits form part of the current appeal proposal submissions, but are now supplemented by a further affidavit. Together, these confirm that the building was in agricultural use in association with the farming activities conducted on the land surrounding it until 2011.
 7. The third affidavit, submitted with the current appeal proposal, confirms that the fields around the barn were sold in 2008 and 2011, the then owner retaining ownership of the building. The most recent affidavit also confirms that, between 'approximately 1985' and May 2015 the building was used in connection with farming activities at Woodland Grove Farm, Worksop, a farm some 9 miles³ away.
 8. Despite being set out within an affidavit, the statement therein is largely the same as that previously submitted in letter form⁴ and thus considered by the Council and the Inspector in the 2017 appeal. Where the affidavit differs however is that it states that the building was used 'primarily for' the storage of fertiliser and agricultural conveyor belting in relation to farming activities at Woodland Grove Farm.
 9. Whilst, on their face, the three affidavits provide evidence of a continuous use of the building for agricultural purposes from 1979 to 2015, it strikes me as being notable that neither of the first two affidavits make reference to the building being used for storage in connection with farming activities at Woodland Grove Farm. Indeed, it would seem from the evidence that for a period in the early 2000's all three signatories to the affidavits used the building for storage purposes in connection with agricultural activities on land around the building and further afield.
 10. With regard to the key date of 3 July 2012, usage at this time appears to be related to the storage of equipment and agricultural conveyor belts associated with farming activities at Woodland Grove Farm. However, neither of the two previous users of the building acknowledged in their affidavits an overlapping period of time that such uses were occurring when they too were using the building for agricultural storage purposes.
 11. The most recent affidavit also refers to the use of the building as only being 'primarily' used for the agricultural storage purposes indicated. It does not go so far as to state that it was used 'solely' for those purposes, which is the threshold set by paragraph R.1(a) of the Order. Whilst the appellant has sought to establish a link to an agricultural use at another location that the previous Inspector found lacking, I have not found the evidence compelling in relation to whether the building was used solely for an agricultural use as part of an established agricultural unit on 3rd July 2012.
 12. I agree that sworn affidavits should not be dismissed lightly. I do not seek to do so. Indeed, I have closely noted that the most recent affidavit and the appellant's statement of case set out matters such as the nature of the use of the building in subtly different terms with regard to whether it was primarily or

² APP/R1010/W/17/3171022

³ By road (7.78 miles 'as the crow flies') – paragraph 8.6, appellant's Statement of Case

⁴ J D Pepper, dated 22 January 2016

solely used for agricultural use. Whilst I agree that the comments raised by local residents and other interested parties are, as the previous Inspector concluded, unsubstantiated and should be apportioned weight accordingly, nor can the content of an affidavit be accepted unquestioningly.

13. Thus, with regard to all of the above therefore, I cannot conclude from the evidence before me that the building was used solely for an agricultural use as part of an established agricultural unit on 3 July 2012. The proposal would therefore fall foul of the exclusions to Part R set out at paragraph R.1(a)(i). As I have concluded that the proposal would not comply with the requirements of paragraph R.1(a) and, as a consequence, would not be permitted development under Part R of the Order, it is not necessary for me to assess the proposal against the other restrictions in paragraphs R.1 and R.2. Nor, for the same reasons, am I required to determine whether prior approval is required in relation to the matters listed in paragraph R.3 (b).
14. I have noted the distance between the appeal building and Woodland Grove Farm, and also those between the appeal building and the farms of other signatories to affidavits submitted with the application. I have some sympathies with the observations of the Council regarding the practicalities of employing such a remote (from Woodland Grove Farm) location for the storage of fertilizer and equipment associated with activities there but these are not determinative in this instance.

Conclusion

15. For the reasons set out above, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR