



Appeal Decision

Hearing Held on 5 September 2019

Site visits made on 28 May and 5 September 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Appeal Ref: APP/H0738/W/19/3224634

Iris Gardens, Thorpe Leazes Lane, Stockton-on-Tees, Durham TS21 3HY

- 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 Michael Newberry against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 18/2555/PABRE, registered on 2 November 2018, was refused by notice dated 14 December 2018.
 - The development proposed is prior notification for change of use from agricultural building to dwelling.
-

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) (the GPDO) for change of use from agricultural building to dwelling at Iris Gardens, Thorpe Leazes Lane, Stockton-on-Tees, Durham TS21 3HY, in accordance with the terms of the application Ref 18/2555/PABRE, registered on 2 November 2018. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with paragraph Q.2 (3) of the GPDO and subject to the conditions listed in the attached Schedule.

Procedural Matter

2. The description and location of development in the heading above differ from those given on the application form. I have used the description of development as given on the refusal notice as I consider that this gives a more appropriate summary of the proposal. I have used the location as given on the appeal form as I consider that this reflects the evidence in respect of the appeal site location. This wording was agreed by the main parties at the Hearing.

Background and Main Issues

3. Schedule 2, Part 3, Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 of the Use Classes Order

- (UCO); and building operations reasonably necessary to convert the building to a use falling within Class C3 of the UCO. Paragraph Q.1(a) of the GPDO goes on to state that development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.
4. The appeal site has a long and complex planning history, with a number of planning applications and appeals. Of particular relevance to this appeal is an appeal decision dating from April 2018¹ (the 2018 Decision) which also considered the change of use of the building under Class Q. In dismissing the appeal, the Inspector referred to the existence of a business but concluded that there was a lack of evidence to link the business to the appeal site on the relevant date. The Inspector also concluded that it had not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building with regard to Paragraph Q.1(i) of Class Q. The appellant subsequently submitted an application for permission to apply for Judicial Review in respect of the 2018 Decision, although permission was refused.
 5. The appellant has subsequently applied for prior approval again, with further evidence in respect of the business which he considers links it to the site on the relevant date of 20 March 2013. It is this application and the Councils refusal to grant prior approval which is the subject of the appeal before me.
 6. In respect of this appeal proposal, the Council has concluded that the building is now capable of conversion under the provision of Paragraph Q.1(i) of Class Q.
 7. On that basis, the main issues are:
 - Whether the development would be permitted development under the provisions of paragraph Q.1 of Class Q of the GPDO. More specifically, was the building used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.
 - If so, whether prior approval should be granted with due regard to the prior approval matters of:
 - Transport and highways
 - Noise
 - Contamination risk
 - Flooding
 - Location and siting of the building
 - External appearance of the building

Reasons

Permitted Development

8. In respect of whether the building was in use as an **established agricultural unit** on 20 March 2013, the Council does not dispute that the site is now used as part of an established agricultural unit. The site is in use as a nursery specialising in the growing of irises as well as other plants, and as a horticultural operation it falls within the definition of an agricultural use.

¹ Appeal ref: APP/H0738/W/17/3192447

9. Photographs dated from August 2011 clearly show screening laid over planting beds and the growth of shoots with the particular characteristics of irises. More importantly, photographs taken on 5 March 2013 and 19 June 2013 also show that screens had been laid over the planting beds and at least one photograph from June 2013 shows that the screen had been partially pulled back which is representative of maintenance during the growth cycle of irises. Whilst some of the planting beds had an overgrown appearance in some of the photographs, it was explained at the Hearing that this is not unusual for the iris' growth cycle. The photographs from March and June 2013 cover the period including the crucial date of 20 March 2013.
10. In the 2018 Decision, the Inspector referred to documents which pointed to the existence of a business named Stockton Irises but considered that there was a lack of evidence which conclusively located the horticultural business to the appeal site on 20 March 2013. It is also a matter of dispute in the appeal before me as to whether the planting on the site is sufficient to demonstrate that a trade or business was being carried out.
11. In response, the appellant has provided a number of invoices with the current appeal which cover the period of March 2013 and which specifically state the appeal site as the business address. This was supported by evidence from witnesses at the Hearing who confirmed that they had purchased plants from the appeal site over that period. A professionally printed price list for the horticultural business from January 2013 also clearly states the appeal site address.
12. The Council refers to discrepancies in some of the invoices. However, these are errors of a minor nature and do not undermine the robustness of the invoices when read as a whole or the supporting evidence from witnesses.
13. Based upon what I have seen and read, there is clear and robust evidence that links the horticultural business to the appeal site as well as demonstrating that material horticultural operations were undertaken at the site over the period including March 2013. I therefore conclude that the appeal site was part of an established agricultural unit on 20 March 2013.
14. Turning to the matter of whether the site was used **solely for an agricultural use** on 20 March 2013, the Council consider that the site was in a mixed use.
15. Reference has been made to conflicting evidence in respect of livestock kept at the premises. A chronology provided by the appellant states that all livestock was sold by 2010. However, whilst I note the Council's concerns in respect of the evidence with regards to livestock, this does not provide evidence of a non-agricultural use operating from the site.
16. The Council refer to applications which they received in May 2011 and February 2012 which respectively refer to the existing use as a "small holding stables and paddock" and "mixed agricultural and equestrian". However, both of these applications pre-date March 2013 by some margin. Photographs have been provided from June 2013 which show a sign displayed on the site which refers to "New roof construction to stables". However, I am mindful that this sign advertised building works undertaken by a contractor who may not have been aware of the planning significance of the wording which in any event reflects the descriptions of development given in 2011 and 2012. In my view the details given on the sign do not conclusively demonstrate that the building was

used for non-agricultural purposes in March 2013. Furthermore, the submitted photographs do not show activities or other features to demonstrate that the building was in a non-agricultural use.

17. The Council has also queried whether the building was suitable for use for agricultural purposes in 2013, with particular reference to a large opening in one elevation which would not be secure and would be more representative of use as a stable. However, the appellant explained at the Hearing that the internal arrangement of the building was suitable for use as horticultural operations and storage and was used as such in March 2013. Whilst the building may have had some physical characteristics as a stable at that time, the evidence suggests that the site had undergone a period of change from a use involving equestrian and possibly livestock uses to a horticultural use and the appearance of the building would have reflected that history.
18. Reference has also been made to a Planning Officer's site notes relating to a visit in June 2014 which describes the site as a paddock and stable building. However, there is substantive evidence that the horticultural use had been established on the site prior to that date and it is therefore unclear as to what evidence the Planning Officer's comments are based upon. I also note that another Planning Inspector visited the site on 24 October 2014 and stated in his Decision² that "the land itself does appear to be in the process of being planted and managed as a nursery, with the building in use in connection with this activity". Having regard to the extensive evidence regarding the horticultural use of the site, the Planning Officer's notes made in June 2014 do not lead me to a different conclusion with regards to the history of the use of the site for agricultural purposes.
19. The building which is the subject of this appeal was undergoing building works over the period including 20 March 2013 and may not have been in active use for horticultural purposes at that time. However, in my view this was merely a short term hiatus as would be expected during building works, and the evidence suggests horticultural use of the building was in place before and after the completion of the works. This does not therefore indicate that the horticultural use of the building had ceased in principle or had been abandoned during the period of the building operations.
20. The Council suggests that the presence of some plant pots, a compost bin and planted flower beds in the photographic evidence does not confirm that the site was solely used for agricultural use. However, the Council has not provided substantive evidence to show that there was another material use other than a horticultural business operating from the site on 20 March 2013.
21. On balance and based on the evidence before me, I conclude that the building which is the subject of this appeal was used solely for an agricultural use on 20 March 2013.

Prior Approval Matters

22. The Council confirmed at the Hearing that any outstanding issues in respect of the prior approval matters could be addressed by appropriate conditions. Based on what I have seen and read I have no reason to disagree.

² Appeal Ref: APP/H0738/A/14/2223613

Conditions

23. The conditions suggested by the Council are imposed with some modifications to assist with clarity and having regard to the terms of the Planning Practice Guidance. As agreed at the Hearing, I have added conditions in respect of the approved plans in the interests of certainty, and a condition requiring the submission of a scheme of surface and foul water drainage to ensure proper site drainage. Conditions in respect of hard and soft landscaping as well as means of enclosure are appropriate in the interests of character and appearance.
24. A condition requiring a noise survey and potential mitigation is required in the interests of the living conditions of future residents. I have attached a condition requiring a land contamination assessment and mitigation if deemed necessary in order to afford protection to human health and the environment.

Conclusion

25. For the reasons set out above, I conclude that the appeal is allowed and prior approval is granted.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

Michael Newberry
Steve Phillipson
Steven Chambers
Paul Burnard
Robert Chawner
Michaela Newberry
Matthew Newberry
Brad Hope
Paul Bone
Natalie Hawman
Miss Pauline Clayton

CSM Architects
Salad Bowl
Accountant
Horticultural Consultant

FOR THE COUNCIL

Mrs Helen Boston
Simon Grundy BSC MTP(UC) MRTPI

Stockton Borough Council
Stockton Borough Council

Documents Submitted at the Hearing

1. Photographs submitted by the Borough Council.
2. Stockton Irises Price List January 2013 and invoice dated 14 December 2012.
3. Appeal Decision re. proposed 2 no additional greenhouses at Iris Gardens, Thorpe Leazes Lane, Stockton-on-Tees, Durham TS21 3HY. Appeal ref: APP/H0738/W/19/3226886, decision date 27 August 2019.

Documents Received Following the Hearing (by request of the Inspector)

1. Copies of the plans on which the Council made its decision.
2. Bundle of documents including correspondence from 2013, cash book extract and suggested drainage condition.
3. Copy of full letter of 1 November 2011, the Council's response on this letter and the appellant's final comments.

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan ref 4276-00A; Proposed Elevs and Plans ref 4274-04A; Roof Plan and Sections 4276-05; and Proposed Site Plan ref 4276-07.
2. Notwithstanding the proposals detailed in the submitted plans, prior to the commencement of development, details of the means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed to the satisfaction of the Local Planning Authority and in accordance with the approved details within a period of 12 months from the date on which the development commenced or prior to the occupation of any part of the development. Any defects in materials or workmanship appearing within a period of 12 months from completion of the scheme shall be made-good by the owner as soon as practicably possible.
3. Notwithstanding the proposals detailed in the submitted plans, prior to the commencement of development, full details of proposed hard landscaping should be submitted to and approved in writing by the Local Planning Authority. This will include all external finishing materials, finished levels, and all construction details confirming materials, colours, finishes and fixings. The scheme shall be completed to the satisfaction of the Local Planning Authority and in accordance with the approved details within a period of 12 months from the date on which the development commenced or prior to the occupation of any part of the development. Any defects in materials or workmanship appearing within a period of 12 months from completion of the scheme shall be made-good by the owner as soon as practicably possible.
4. Notwithstanding the proposals detailed in the submitted plans, prior to the commencement of development hereby approved a soft landscaping plan should be submitted to and approved in writing by the Local Planning Authority. This will be a detailed planting plan and specification of works indicating soil depths, plant species, numbers, densities, locations inter relationship of plants, stock size and type, grass, and planting methods including construction techniques for pits in hard surfacing and root barriers. All works shall be in accordance with the approved plans. All existing or proposed utility services that may influence proposed tree planting shall be indicated on the planting plan. The scheme shall be completed in the first planting season following:
 - i. Commencement of the development;
 - ii. or agreed phases;

- iii. or prior to the occupation of any part of the development;
- and the development shall not be brought into use until the scheme has been completed to the satisfaction of the Local Planning Authority.
5. Prior to the commencement of development, a noise survey for the proposed residential property that is in the vicinity of Durham Road shall have been submitted to and approved, in writing, by the Local Planning Authority. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700-2300 hours and night-time as 2300-0700 hours, and identify appropriate noise mitigation measures. The residential unit shall thereafter be designed so as not to exceed the noise criteria based on current figures by the World Health Authority Community Noise Guideline Values/BS8233 "good" conditions given below:
- i. Dwellings indoors in daytime: 35 dB LAeq,16 hours
 - ii. Outdoor living area in day time: 53 dB LAeq,16 hours
 - iii. Inside bedrooms at night-time: 30 dB LAeq,8 hours (45 dB L_{Amax})
 - iv. Outside bedrooms at night-time: 45 dB LAeq,8 hours (60 dB L_{Amax})

Such detail and appropriate consequential noise mitigation measures as shall have been agreed, in writing, by the Local Planning Authority shall be implemented prior to occupation of the building on the site and shall be maintained as agreed thereafter.

6. Prior to the commencement of development hereby permitted a phased investigation of potential contamination should be carried out by a qualified environmental consultant. This shall be in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. This should include the following:
- i. Phase 1 desk study and site reconnaissance including conceptual site model, which may lead to,
 - ii. Phase 2 staged intrusive site investigation and characterisation, which in turn may lead to,
 - iii. Phase 3 risk management (which may involve remediation and validation).

The Phase 1 (desk study) need only be appropriate to the potential risk, and should it be considered that no unacceptable risk is present, then Phases 2 and 3 may not be required. The results of each Phase of the site investigation and proposed risk management (if required) shall be submitted to and approved in writing by the local planning authority before progressing to the next Phase and before any development begins.

7. Development shall not commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

End of Schedule