
Appeal Decision

Site visit made on 4 December 2019

by R Lankshear BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2020

Appeal Ref: APP/G1630/W/19/3236306

The Barn, Half Penny Farm, Cold Pool Lane, Badgeworth, Cheltenham, Gloucestershire GL51 4UP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr D Millard against the decision of Tewkesbury Borough Council.
 - The application Ref 19/00278/PDAD, dated 7 March 2019, was refused by notice dated 31 May 2019.
 - The development proposed is change of use of an agricultural building to a single dwelling house (C3) along with associated works reasonably necessary for the conversion.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr D Millard against Tewkesbury Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this case is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

4. The appeal relates to a breeze block and timber agricultural building and the proposal to convert it for use as a C3 dwelling.
5. Class Q 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 (dwellinghouses) of the Schedule of the Use Classes Order 1987 and any building operations reasonably necessary to convert the building.
6. Such development is not permitted under paragraph Q.1. (g) where development under Class A(a) or Class B(a) of Part 6 of the Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit since 20th March 2013.

7. The Council contend that an agricultural barn has been erected on the established agricultural unit contrary to paragraph Q.1. (g) since 20th March 2013 under application 13/00579/APP, determined on 24 July 2013. From the details before me the prior approval application was submitted by the appellant and justified on the basis of the agricultural need of the appellants holding to support the established poultry business.
8. However, the appellant contends that at the time of the previous application for, and construction of, the building allowed under the 2013 prior approval, the land in question was rented out by the appellant under an agricultural farm business tenancy (FBT) and as such on land forming part of a separate established agricultural unit, referred to as Burley Fields Farm. As such they contend that the proposal complies with paragraph Q.1. (g).
9. The GPDO defines an established agricultural unit as 'agricultural land occupied as a unit for the purposes of agriculture... (b) for the purposes of Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins'. Firstly, on the evidence before me there is no debate that the land was being used for agricultural purposes at the relevant date.
10. However, it is evident that the parties have conflicting views of whether the previous building erected under the 2013 prior approval has been erected on a separate established agricultural unit. In consideration of what constitutes the established agricultural unit, whilst it is not necessary for the occupier to own the land in order for it to form part of their unit, the terms of occupation are certainly of relevance.
11. From the details before me, the FBT commenced on 25th September 2012 and expired on 24th September 2019. Although the appellant indicates that 12 months' notice would be required under the Agricultural Tenancies Act, given that the tenancy has now expired there is a lack of an ongoing formal agreement. As such, to my mind, the arrangement detailed constitutes a relatively short-term tenancy with minimal long-term security, particularly given the agreement has in fact expired. Whilst I acknowledge that the tenant farmer may still have control of the building at this time, on the balance of probability I have no evidence that this tenancy will continue in the long term and I am not satisfied that I can discount this land and building from the appellant's established agricultural unit.
12. Furthermore, from the details before me it is evident that the previous application for prior approval whilst submitted after the commencement of the FBT, was submitted by and justified on the basis of the requirements of the appellant and not of their tenant. This is a matter I consider should be given significant weight in determination of this appeal. Whilst I acknowledge the appellants contention that they have never utilised the barn and that the land is and has been utilised by an entity with a separate agricultural holding number, it is evident that the barn was justified on the needs of the appellants agricultural unit and remains in their ownership.
13. In my mind the established agricultural unit would be that recognised and accepted in the longer term. Owing to the justification provided for the original barn, and the term, nature and expiration date of the tenancy in question, I consider on the balance of probability, that it is reasonable to consider that the barn erected under the 2013 prior approval falls within the established agricultural unit of Halfpenny Farm (the appellant) and not that of Burley Fields

Farm (the tenant). As such, I consider that both barns fall within the same established agricultural unit for the purposes of the GPDO. Therefore, I consider that the proposal does not meet the relevant requirements of Class Q.

14. For the above reasons I conclude that the proposal would not comply with one of the limitations and restrictions specified as being applicable to the proposed development. As such, it could not benefit from deemed permission under Class Q.

Other Matters

15. There is some debate whether permitted development restrictions would be prohibitive if considered as part of a smaller holding under the control of the tenant. However, as I have found that the previous building was erected within the appellant's established agricultural unit, I am not persuaded that this is of particular relevance to my determination of this appeal.

Conclusion

16. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Lankshear

INSPECTOR