
Appeal Decision

Site visit made on 19 February 2020

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/P1133/W/19/3241166

Agricultural Building, The Meadow, Woodland, Newton Abbot TQ13 7LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO').
 - The appeal is made by Mr Gordon Clarke against the decision of Teignbridge District Council.
 - The application Ref 19/00615/NPA, dated 21 March 2019, was refused by notice dated 17 May 2019.
 - The development proposed is described on the application form as "Timber framed building with metal roof. Sited at top end of field adjacent to vehicle entrance off lane".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the banner above is taken directly from the application form. It is clear that the application sought the change of use of an agricultural building to a dwellinghouse. I have therefore considered the appeal on that basis.

Main Issue

3. The main issue in this case is whether the appeal building would qualify for change of use to a dwelling under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Reasons

Background

4. The deemed permission granted by Class Q is subject to a number of limitations which are listed in Paragraph Q.1. The proposal must meet all of these in order to qualify as permitted development. This includes Paragraph Q.1(a) which stipulates that the site must have been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 ('the relevant date'). Paragraph X defines 'agricultural building' to mean a building used for agriculture and which is so used for the purposes of a trade or business.

Assessment

5. The field within which the appeal site lies was originally owned by an individual (the original owner) and formerly comprised part of his agricultural holding. However, in 2010 the field was sold to a new owner (the subsequent owner) and following this, the building, which is the subject of this appeal, as well as others, was erected on the land. The evidence before me suggests that the subsequent owner used the site to accommodate horses. This is supported by representations from interested parties. There is also reference to the land being let by the subsequent owner for use by other individuals, as well as the buildings sometimes being left empty. The evidence does not however demonstrate that the use of the land by the subsequent owner was undertaken for the purposes of any trade or business.
6. I have been provided with a letter from the original owner, which appears to have been submitted in support of a previous application for a Certificate of Lawfulness on the site, which indicates that the land and buildings were in commercial agricultural use through the spring of 2013, that sheep and cows were grazed on the land and the buildings were used in association with that activity. It is also indicated that at the time the letter was written (September 2018) that despite having sold the land, the writer was using the land for grazing sheep as well as having access to the buildings and at no time did the writer use the field for accommodating horses.
7. I am also aware however, that following this, at the time the application for prior approval was being considered by the Council, the original owner submitted a further letter which set out that the detail of the first representation was inaccurate. This further representation sets out that his sheep were occasionally allowed access to graze excess grass, left by horses. Furthermore, the sheep would have "wandered in and out" of the stable buildings. This is suggestive that the sheep were grazing the land at the same time as the subsequent owner's horses.
8. The appellant submits photographs of the site with sheep sheltering under the canopy of the building, as well as animal droppings within the building, which it is contended demonstrate that the land and buildings were used for agricultural purposes. However, this is contested, and it is stated in a third representation from the original owner that the photographs were taken at a point during 2018, when the appellant requested that he introduce sheep to the field as it had become overgrown. This representation further categorically denies that the building was used by the original owner's sheep in 2013 and that they were only able to graze the land, as they had broken into that field, for two or three days.
9. There is also reference to the original owner making haylage from the appeal site and it has been contended that this was part of the operation of his agricultural holding. It is clarified that the making of haylage was done under contract for a third party, who was at the time letting the land from the subsequent owner, apparently for equestrian purposes, and the resultant bales were left within the field. As such, this does not demonstrate that the site was used solely for agricultural purposes.
10. Interested parties also refer to the erection of the buildings in "around 2010/11", there being no livestock apart from horses and the use of the field and stables remaining that way for "about seven years". This representation also contends that during 2018 and 2019, following the cessation of the use of the site by horses, that the land was occasionally grazed by sheep or cattle. There is also further reference within representations to the land being used for the sole purposes of keeping

horses and for equestrian purposes, and only more recently for grazing by livestock.

11. I acknowledge that there is a Certificate of Lawfulness¹ for "Agricultural buildings used for storage and livestock" at the site. However, this was issued on 4 March 2019 and establishes only that the buildings would have been in situ for four years preceding this date. As such, the certificate does not establish the use that the buildings were put to on the relevant date.
12. The appellant also provides a number of aerial photographs and contends that they demonstrate that the buildings were used as part of the neighbouring agricultural holding. However, whilst they do show that activity has taken place within the vicinity of the building, as well as around the vehicular accesses to the site, it does not demonstrate any link with the commercial operation that may be taking place as part of an agricultural holding. There is also reference to a gap in the hedge allowing sheep to pass from one field to another. This however shows only a snapshot in time and also does not convince me that the building was used as part of an agricultural trade or business.
13. The main use of the land, and thereby the building, at the relevant date appears to be that of the grazing of horses, but not as part of a trade or business. It appears that the grazing of land that took place by sheep, was at most infrequent and accidental, as such was of such low intensity as to not establish an agricultural use of the land. Accordingly, on balance, the weight of the evidence demonstrates that the site was not solely used for agricultural purposes, particularly as part of any trade or business, on the relevant date. Thus, the proposal would not benefit from permitted development.

Other Matters

14. I note that the Council has also included reasons for refusal in respect of highways impacts and the site being an impractical and undesirable location. However, as I have found that the building was not in use solely for agricultural purposes on the relevant date, the proposal does not benefit from permitted development and it is not necessary for me to consider these matters further.
15. I acknowledge that some interested parties have supported the proposal on the basis of matters including it being part of a horticultural enterprise, the provision of an affordable housing unit and the re-use of an existing building. However, these matters have little influence on the factual consideration of the use of the building on the relevant date.

Conclusion

16. For the above reasons, I conclude that the proposal does not accord with the requirements of paragraph Q.1(a) of the GPDO, is not permitted development, and that the appeal should be dismissed.

Martin Allen

INSPECTOR

¹ Council reference 18/02064/CLDE