



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: 19 March 2020

Appeal Ref: APP/U1105/W/19/3241417

Ware Farm, Chineway Hill, Ottery St Mary EX11 1PJ

- 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 'GPDO').
 - The appeal is made by Feniton Park Limited against the decision of East Devon District Council.
 - The application Ref 19/0834/PDR, dated 16 April 2019, was refused by notice dated 12 June 2019.
 - The development proposed is the change of use of agricultural buildings to a flexible use for aparthotel units.
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Decision

1. The appeal is dismissed.

Application for Costs

2. The appellant has indicated that an application for costs would be submitted no later than final comments stage. No such application has been submitted and as such this is a matter that I have not considered.

Procedural Matter

3. The application form contains no description of development, but instead refers to the "attached statement". I have therefore taken the description above from the supporting statement submitted with the application.

Main Issue

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

Reasons

Background

5. The deemed permission granted by Class R is subject to a number of limitations which are listed in Paragraph R.1. The proposal must meet all of these in order to qualify as permitted development. This includes Paragraph R.1(a) which stipulates that the site must have been used solely for an agricultural use as part of an established agricultural unit on 3 July 2012 ('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

6. The appeal buildings comprise three structures variously constructed from timber, corrugated sheeting and concrete block. The buildings form part of a larger complex and are close to an existing farmhouse.
7. Both main parties appear to agree that the buildings were used for agricultural purposes on the relevant date. However, there is a disagreement as to whether the use of the buildings for other purposes was of such an extent so as to mean the buildings were not solely in agricultural use.
8. The appellant cites evidence from the farmer who previously owned the site, which outlines that Barn C was used to house cattle and/or sheep, Barn D to house cattle and Barn E was used to store hay and straw, for feed and bedding for the livestock. In support of the contention that the site was used for agricultural purposes, details of livestock movements have also been provided. There is also a copy of sales particulars from when the site was placed on the market in April 2016, which includes photographs of cattle being housed within Barn D, albeit that it is unclear when these photographs were taken. On the basis of the information provided, I have no reason to find that the buildings were not used at times for agricultural purposes. However, the evidence does not exclude the possibility that other uses were also taking place.
9. I am aware that representations from interested parties have been received, which provide details of the use of the buildings. By way of a Statutory Declaration, one party attests that horses were kept in Barns C and D before, during and after July 2012 and that Barn E was primarily used for the storage of haylage for feeding the horses on the holding. There is also reference to the equestrian activities being the primary operation, there being over 50 horses at the site at any one time, with agricultural activities being secondary.
10. In addition to this, there are various further representations which refer to the breeding of horses taking place at the site and the accommodation of these horses within the buildings which are the subject of this appeal. Specifically, it is stated that there were at some point, loose boxes present within Barn C and Barn D was used to house brooding mares. Some of the representations attest to personal knowledge of the site, from previous employment, and endorse that both Buildings C and D were used for the stabling of horses.
11. I acknowledge that there has been a previous refusal of a Certificate of Lawfulness at the site, for the breach of an agricultural occupancy condition placed on the farmhouse. Whilst compliance with such a condition indicates the presence of agricultural activity taking place, it does not to my mind demonstrate that no other activities were occurring. In any event, this application appears to have been submitted in 2014 and would have considered a period of ten years previous to this.
12. As a result, the weight of the evidence that is before me points to, in addition to any agricultural use of the buildings, there also being an equestrian element to their use, of such an extent to clearly not be de minimus. Thus, I cannot be satisfied that Buildings C and D were solely in agricultural use on the relevant

date and consequently the proposal does not benefit from permitted development.

Other Matters

13. The decision notice also refers to a potential impact on the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area. As I have found above that the proposal would not be permitted development, the development will not take place and so I have no need to consider this matter further.
14. The appellant has provided me with an appeal decision¹ which it is considered is relevant to the scheme before me, as it explores the previous agricultural use of a building. However, in that case, the building was no longer in active use on the relevant date and as such the Inspector explores whether there have been any lawful intervening uses, since its last use for agricultural purposes. This differs from the case before me, as there is no disagreement that the buildings were in active use on the relevant date and I have found that the use was not solely agricultural. Therefore, this appeal decision does not change my reasoning on the main issue.

Conclusion

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

Martin Allen

INSPECTOR

¹ APP/X1545/W/18/3198348