



Appeal Decision

Site visit made on 28 January 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal Ref: APP/J1915/W/19/3242050

Poultry Barn, Monks Green Farm Ltd, Mangrove Lane, Hertford, Herts SG13 8QL

- 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 William Ashley (Monks Green Farm Ltd) against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/1936/ARPN, dated 20 September 2019, was refused by notice dated 14 November 2019.
 - The development proposed is the change of use of agricultural building to C3 (residential) for 5 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr William Ashley (Monks Green Farm Ltd) against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have used the description of development from the Council's decision notice as this is more succinct to describe the proposal.

Background and Main Issues

4. Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (the GPDO) permits the change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order¹. Class Q(b) of the GPDO permits building operations reasonably necessary to convert the building referred to in (a) above.
5. In this case, the Council contends they do not consider the appeal building to be one which is connected with agriculture. Although the building has previously been used as a poultry rearing barn for chickens, this use ceased in 2012 prior to 20 March 2013. The building is currently vacant and has in the interim period of seven years, whether temporary or permanent in nature been

¹ The Town and Country Planning (Use Classes) Order 1997 (as amended)

used for other uses and not for the purposes of agriculture. Furthermore, notwithstanding the above, the Council does not consider the proposal would meet the cumulative limitations, as set out in the GPDO for larger, smaller dwellings and total floorspace for dwellings. Although not a reason for refusal, the Council also suggests that it would not meet Class Q.1(d) on the number of separate dwellings within an established agricultural unit.

6. Therefore, the main issues are:

- whether the proposed change of use constitutes permitted development pursuant to Class Q.1(a) of the GPDO; and
- whether the cumulative number of separate dwellings and floor space of the existing building or buildings changing use is within the limitations, pursuant to Class Q.1(b), (c) and (d).

Reasons

7. The appeal site is a redundant poultry building constructed of a modern steel frame with block work, insulated metal cladding walls and composite roof panels with concrete flooring. The proposal is for the conversion of the building to residential accommodation consisting of five dwellings.

Whether permitted development under Class Q.1(a)

8. The limitations set out in Class Q.1(a) of the GPDO do not permit development if the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20 March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
9. The appeal site building has a historical agricultural use, of which the Council contends was up to 2012 when the use ceased, based on their own planning records and that of other third-party representations. These suggest that the building during this period has been used for other non-agricultural purposes 'other car sales business' and a B8 storage use or other commercial enterprise, be that the whole or part of the building. No detailed evidence has been submitted of historic planning records, but these are referenced in the officer's report and within the planning history section.
10. The GPDO, paragraph W² (10)(a), requires that when determining applications, the local planning authority must take into account any representations made to them as a result of any consultation undertaken. Third party representations have been provided as part of this appeal which include a copy of an enforcement notice and other sourced information relating to the site. I acknowledge that this in part, relates to the 'poultry sheds' and not the 'poultry house', the subject of this appeal. There also appears to be some historical personal dispute between the appellant and the third parties, of which is not a planning consideration. Nonetheless, this evidence includes an online listing and photograph of the inside of the appeal building and shows it was used for other purposes during a timeframe of 2012 to 2014, including storage of vehicles and a car sales business.

² W.- Procedure for applications for prior approval under Part 3

11. The appellant's design and access statement states '*the building was erected to rear poultry which ceased in later 2013 following notice being given by the supplier in 2012*' it goes on to say '*With the poultry contract drawing to an end, other uses were explored but these were not financially viable, and the size of the barn limited other uses*'. It claims that since then the building has been in use for agricultural storage of mowers, digger and general agricultural equipment.
12. The appellant has provided further evidence, which includes agricultural holding numbers and a letter from their accountant³ confirming that there are two businesses on the site and both agricultural trading entities. It sets out that Monks Green Farm Ltd was the poultry enterprise and that the businesses at the site have been in existence and operated for over 50 years. The information on the accounts is non-specific to the appeal building, it does not demonstrate that an agricultural use has taken place, only that annual returns have been met and as indicated in the appellants evidence there are many business's at Monks Green Farm. Moreover, the accounts are only one single factor and not decisive as to whether the activities constitute a trade or business⁴, that being the agricultural use.
13. A further letter is provided from P.D. Hook (Rearing Ltd), of which is not dated. This advises that a poultry contract was in place with the appellant who reared broiler breeders and lasted over many years with the renewal of an established annual contract.
14. Evidence relating to the enforcement matters at the site is limited. It is not clear when the Council started to investigate these matters and exactly which part of the site or which building this refers to in the absence of further evidence⁵. Whilst the letters indicate that a poultry business was run on the site, within the appeal building, there is no evidence as to over what period of time the building was used for the purposes of agriculture or exactly when this ceased.
15. I saw at the time of my site visit, the building itself was generally empty and although there was some evidence of equipment being stored including machinery and vehicles, it was also evident that it was used for domestic and general storage of items and the continuing agricultural use as described by the appellant was not quantified. Moreover, the evidence before me must demonstrate that the site/building has been solely used for agriculture on the specified dates. If the site, building or land is in a mixed use, meaning that it is put to one or more primary uses, permitted development rights will not apply. As such, taking into account my observations and the evidence received, I am not convinced that the building has not been in continuous agricultural use, or that its last use was for such purposes.
16. The appellant has raised concerns in respect of the Council's handling of the application, be that as it may, it would be a matter for the Council at that time if they required further evidence. However, in the GPDO, paragraph Q.2. clearly sets out what the developer must submit and in paragraph W.(3) advises that an application may be refused, where in the opinion of the local planning authority the developer has provided insufficient information to

³ Wilson Devenish Chartered Accountants & Business Advisors: Reference MON001/2018.05.03, dated 3 May 2018

⁴ South Oxfordshire DC v SSE & East [1987] JPL 868

⁵ Email From: Paul Dean: Date sent: Tuesday 22, 2014 10:22 AM

establish if the proposals comply with any conditions, limitations or restrictions specified as being applicable in that class.

17. On the basis of the evidence before me, insufficient evidence has been provided to demonstrate that on the balance of probability the building was solely in agricultural use, Class Q.1(a)(i), (ii) on 20 March 2013 or when it was last in use before this date. I cannot be satisfied that the proposal is permitted development and as such I must find it is not. Therefore, the proposal would not comply with the express terms of permitted development set out in Schedule 2, Part 3, Class Q of the GPDO, particularly paragraphs Q.1.(a).

Whether permitted development under Class Q.1.(b), (c) and (d)

18. The Council maintain even though there are two agricultural holdings on the land these are for the purpose of a rural payment agency. They consider actively and historically there is only one established agricultural unit including the appeal and wider site of Monks Green Farm, regardless of the separation of site management. The appellant disagrees with the Council's assessment that it should be considered that each is its own entity, and there are two separate established farming enterprises for the purposes of the cumulative calculations set out in the limitations of Class Q.1(b), (c) and (d).
19. The GPDO makes reference only to there being an established agricultural unit, but sets out the definition, which means agricultural land which is occupied as a unit for the purposes of agriculture, including: (a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit, or (b) any dwelling on that land occupied by a farmworker.
20. For the purposes of Part 3, Paragraph X of the GPDO only requires that the land is occupied as an agricultural unit at the particular point in time as specified in the relevant Class. The requirement that the agricultural unit be 'established' on a particular date is not a requirement that the unit is established for a given period prior to the date and there is no requirement for the established agricultural unit to be of a particular size. Whilst the purpose of the agricultural holdings certificate would be to ensure that anyone with an agricultural tenancy is notified of a planning application, it is not evidence of the use of land or any buildings as 'agriculture', or whether the land is part of an 'agricultural unit'.
21. It was established in Case Law that an agricultural unit is not the same thing as the planning unit and may comprise more than one planning unit⁶. Neither is it necessary for the occupier to own the agricultural land in order for it to form a unit, however there should be some association/ownership of which the appellant confirms, albeit in different company names. Furthermore, the separation of parcels to other uses within the unit do not discount it from being an 'established agricultural unit'. It is therefore a matter of fact and degree, but from the evidence before me, I consider that there has been a clear association between the two parcels of land, based on the historic activities of the site, and that there were and has been regular sharing of activities of an agricultural use, which would lead me to the conclusion that there is one established agricultural unit for the purposes of Class Q.1.

⁶ Fuller v SSE and Dover DC [1987] JPL 854

22. Class Q.1(b)(i)(aa) of the GPDO prevents development under Class Q within an established agricultural unit if the cumulative number of separate larger dwellings developed exceeds 3 or (bb) the cumulative floor space of the existing building or buildings changing use to a larger dwelling or dwelling exceeds 465 square metres (sqm). In the case of smaller dwellings Class Q.1(c)(i)(aa) prevents the cumulative number exceeding 5; or (bb) the floorspace of any one separate smaller dwellings exceeding 100 sqm.
23. The proposed development would include one larger dwelling and in combination to the previous developments⁷ at the established agricultural unit would result in a cumulative total of four larger dwellings. The floor space of the proposed larger dwelling would be 453 sqm, by combining this with existing development the cumulative floor space would be 855 sqm. The proposed development would therefore not meet the criterion (aa) or (bb) of Class Q.1(b)(i).
24. The proposals also include four smaller dwellings, these would not individually exceed the number but combined with the previous development for two smaller dwellings⁸ would result in a total of six exceeding the limitation of five. However, the floorspace of any one of the separate smaller dwellings would not exceed 100sqm. As such, the proposed development would not meet the criterion of Class Q.1(c)(i)(aa). Furthermore, the cumulative number of separate dwellinghouses (together with any previous development under Class Q) would result in a total of ten dwellings, which again would not meet the criteria set out in Class Q (d)(ii).
25. Notwithstanding, that I have found, based on what has been presented to me, the building was not in agricultural use on either the prescribed date or when last used and fails to demonstrate compliance with Class Q.1(a) of Part 3, Schedule 2 of the GPDO. It would neither comply with the limitations as set out in Class Q.1(b), (c) or (d). As such the proposed development does not constitute permitted development.

Other Matters

26. I understand other developments have been granted prior approval by the Council under Class Q in the area. I have been provided with limited details of them, although there may be some similarities. The appellant suggests that the Council have been inconsistent and made inaccurate assertions, but these do not affect the precise circumstances of the appeal scheme. I have also had regard to an appeal decision which has been brought to my attention⁹, but the individual circumstances of that case differ from the proposals before me, whilst it was dismissed for not being permitted development under Class Q.1(a). In any event, the appeal needs to be determined on its individual merits on the basis of the evidence before me.
27. Given my conclusion above, there is no need for me to consider the further prior approval matters of transport and highways, noise, contamination, flood risk, impractical or undesirable location and the design or external appearance, as it would not alter the outcome of the appeal.

⁷ 3/15/0236/PR and 3/215/1775/ARPN

⁸ 3/18/1905/ARPN

⁹ APP/J1915/W/16/31244108

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR