Appeal Decision

Site visit made on 4 August 2020

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 9th September 2020

Appeal Ref: APP/C1625/W/20/3252210
Land at Huntingford, Swinhay Lane, Charfield, Gloucestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town Country Planning (General Permitted Development) Order 2015 (as amended).
- The appeal is made by Mr N Hickman against the decision of Stroud District Council.
- The application Ref S.19/2178/P3Q, dated 4 October 2019, was refused by notice dated 27 November 2019.
- The development proposed is change of use of one agricultural building and associated operational development to create 1 bedroom dwelling, together with associated residential amenity space.

Decision

1. The appeal is allowed and approval granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for a change of use from an agricultural building to a dwellinghouse at Land at Huntingford, Swinhay Lane, Charfield, Gloucestershire, in accordance with the details submitted pursuant to Schedule 2, Part 3, Class Q, namely: 289_001 Site Location Plan, 289_002 Existing Block Plan, 289_003 Proposed Block Plan, 289_010 GA Existing Plan, 289_011 Proposed Plans, 289_012 Proposed Elevations.

Main issue

2. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the 'GDPO'), and if so whether prior approval is required, and if so whether it should be granted.

Reasons

3. The site is a small, steel-framed barn, used for small-scale agricultural storage at the time of the site visit. It is at the entrance to a tranche of land on which the appellant grows approximately 200 Christmas trees, produces hay and keeps poultry. A small number of sheep were also observed at the site visit. The poultry graze the land between the Christmas trees and on the pasture. The eggs and birds are eventually sold on.

4. The building was originally constructed in 2007 for 'agricultural use'. The planning permission at the time[1] made no reference to forestry, but the Officer's Report, as quoted by the Council, stated that it was to be used in conjunction with the applicant's forestry business. The Council now state that as the building is used in conjunction with the applicant's forestry business it cannot benefit from Class Q, which requires that the building is for agricultural use. For the same reasons, they also consider that the development is not permitted by Class Q by virtue of it not being part of an established agricultural unit.

5. The appellant argues that the term 'forestry' has been incorrectly applied to Christmas trees by all parties, both in 2007 and in the current application, in part because of the lack of clear definition in planning law. I consider that there is merit in this argument, highlighted by the potential confusion on the 2007 planning permission, which allows an agricultural building for a forestry business and subsequent reinterpretation of this by the Council. I will therefore consider whether the activity of growing Christmas trees constitutes 'forestry' or 'agriculture' below.

6. To qualify for Class Q, the site had to have been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. I have not been provided with specific information from either party regarding the activities at the site on the 20 March 2013. However, the appellant has clearly stated that the business has not significantly changed since 2007 and the Council have not suggested otherwise. On this basis, I am satisfied that the established business on 20 March 2013 was broadly equivalent to that seen both today and in 2007.

7. For the purposes of paragraph 2(9) of Schedule 5 of the 1990 Act, forestry is defined as 'the growing of a utilisable crop of timber', albeit in relation to mineral workings. The Oxford English Dictionary (OED) states that it is 'the science and art of forming and cultivating forests and management of growing timber'. The 'UK Forestry Standard: the government's approach to sustainable forestry' (2017) (UKFS) is consistent in stating that that forestry is the science and art of planting, managing and caring for forest. A 'forest' is defined by the OED as an extensive tract of land covered with trees and undergrowth, and by the UKFS as generally large tracts of land, under stands of trees.

8. Christmas trees are grown for decorative purposes, rather than for timber and in this, I find a significant difference between the purpose of the enterprise and forestry. I do not consider the small scale of this Christmas tree farm to be a large tract of land, as would be typical for a forest. I conclude that the activity of growing Christmas trees on this scale is not forestry.

9. 'Agriculture' is not defined in the GPDO and so the definition in section 336(1) of the 1990 Act prevails in the absence of any indication to the contrary. This states that agriculture includes, amongst other things, horticulture, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.

10. There is a strong parallel between growing flowers that are grown for decoration, typically cut at the point of sale and Christmas trees. I consider that cut flowers could be defined as either market gardening, which is a

[1] S.07/0376/FUL

typically small-scale operation selling fruit, vegetables and flowers, or horticulture, which relates to the cultivation of a garden. A nursery implies transplantation, whereas most of the Christmas trees are sold after being cut.

11. I note that the HMRC Business Income Manual states that most Christmas tree production is from specialist producers or from farmers who grow the trees as a crop, and that these farms are nurseries and thus fall within the statutory definition of 'market gardening'. Although developed for a different purpose, I give some weight to the definition in so far as it is clear that Christmas trees are not, in the opinion of HMRC, born of 'forestry'.

12. Regardless of exactly which agricultural category is chosen, I am satisfied that because growing of trees is on a small scale and for decorative purposes, and integrated with indisputably agricultural activities, including raising poultry and producing hay, the overall enterprise is agricultural.

Prior approval

13. No concerns have been raised in regard to transport and highways, noise impact, contaminated land, flooding, ecology or the design of the building. Prior approval can therefore be granted.

Conditions

14. The Council requested that 3 conditions be imposed. It is not appropriate to require that development is commenced within a specified period because the permission granted by the Order is continuous. The GDPO already requires that development be carried out in accordance with the details approved, so I have also not imposed a condition referring to plans. I have also not imposed a condition to control the timing of construction activities, because I do not consider it reasonable or necessary for such a small development in a remote area.

Conclusion

15. Growing Christmas trees on a small scale is an agricultural activity, as are the other activities undertaken at the site. I am therefore satisfied that, on the balance of probability, the site was part of an established agricultural unit on 20 March 2013.

16. On this basis, the proposal meets the requirements for prior approval and is permitted development under Schedule 2, Part 3, Class Q of the GDPO. I therefore conclude that the appeal should succeed, and approval is granted.

B Davies

INSPECTOR