



Appeal Decision

Site visit made on 29 September 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2020

Appeal Ref: APP/J1860/W/20/3255136

Kerswell House, Kerswell Green, Worcester WR5 3PF

- 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 R Melling against the decision of Malvern Hills District Council.
 - The application Ref 20/00490/GPDQ, dated 9 April 2020, was refused by notice dated 9 June 2020.
 - The development proposed is the change of use of an agricultural building to a dwellinghouse and associated operational development.
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of an agricultural building to a dwellinghouse and associated operational development at Kerswell House, Kerswell Green, Worcester WR5 3PF in accordance with the application 20/00490/GPDQ dated 9 April 2020, and the details submitted with it.

Procedural Matters

2. The application forms did not include a description of development. Consequently, it has been taken from the appeal forms and the decision notice. I have dealt with the appeal accordingly.
3. The Council refused the application pursuant to Class Q.(a) relating to a change of use. It does not dispute the proposal insofar as it relates to Class Q.(b) and therefore it is considered that the building operations presented under the appeal are reasonably necessary to convert the building, and this is reflected in the structural report submitted under the proposal. Given that the Council came to the decision that the proposal was not permitted development, it did not consider whether the proposal met the conditional requirements pursuant to Class Q.2. Therefore, I have made my own assessment under the appeal.

Main Issue

4. The main issues are whether the building was used solely for agriculture when it was last in use, and whether it was part of an established agricultural unit, established on or before 20 March 2013, and therefore whether the proposal is permitted development under Class Q.1; and whether the proposal satisfies prior approval matters under Class Q.2.

Reasons

Permitted Development

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 to the Use Classes Order and any building operations reasonably necessary to convert the building.
Paragraph Q.1 (a) sets out that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or 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.
6. The proposal relates to an outbuilding associated with a historical working farm. The site is set within an open countryside location and is of a rural character and appearance, with agricultural fields populating the surrounding environment. During my site visit, there were no clear signs of agricultural uses or activities on site.
7. However, the current use of the site and the building itself are somewhat peripheral given that the provisions of Class Q relate to the last use of the building and whether any agricultural unit had been established on or before 20 March 2013. In this context, the site visit confirmed that the building was not currently in use and appeared vacant. Furthermore, the Council's own reporting seems to confirm that there is no evidence that the building has been used for any other purpose. Consequently, the outcome of the appeal rests on the evidence relating to historical uses.
8. The appellant contends that the building was originally utilised for the storage of agricultural equipment, seed, produce and agricultural machinery as part of the original working farm. This claim is supported by a signed letter from the previous owners of the property which confirms that these operations were established before the sale in 2002. The statement from the previous owner, together with my observations on site, including that the building appeared capable of being used as an area for storage, and in the absence of evidence suggesting that it was used in any other capacity since its last purported agricultural use, brings about a collective evidence base that suggests the appellant's contentions are accurate.
9. A previous application¹ pursuant to Class Q was approved by the Council on the site. Consequently, this significantly implies that the Council was satisfied that at least some form of agricultural unit was established on the wider property prior to 20 March 2013, otherwise the Council would not have been able to make such a decision in that case.
10. The appellant has also provided substantive evidence of commercial agricultural operations at the site, in the form of sales receipts derived from the trading of hay that were also dated prior to 20 March 2013.
11. There appears no logic as to why the building could or would not have reasonably been used for storing hay prior to trading. Cumulatively, the evidence suggests that the property was historically a working farm, occupied for the purposes of agriculture and that an agricultural unit was established before the relevant trigger date under Class Q.

¹ 15/01677/PDU

12. Accordingly, on the balance of probability, and based on the collective weight of the various strands of evidence, I have no reason to doubt the appellant's contention that the last use of the building was for agriculture and that this was part of an agricultural unit.
13. Planning Practice Guidance² states that the prior approval process is meant to be light-touch and does not seek to replicate the planning application system, and I have taken a straightforward view of requirements in this context. The GPDO does not require a complicated assessment of an agricultural use's viability, neither does it require a weighing up exercise about one particular type of agricultural use compared to another, the extent of the use or who the proprietor is. In a similar context, there is no requirement for the use to have been continuous up until the application was submitted and is irrespective of the planning history of other buildings within the wider site therein. Whether the use of the building in this case has been abandoned or not is a peripheral matter as the GPDO merely requires that the last use was for agriculture and that this use was part of an agricultural unit established on or before 20 March 2013.
14. The appeal decision³ acknowledges that there were no records of sales or other transactions submitted in support of that particular proposal. Clearly, this is not the case here and to reiterate the Inspector's comments therein, there is no requirement in the GPDO or elsewhere for an agricultural trade or business to be of a certain scale or turnover. I would add to this and point out there is also no requirement for such trading of goods to be conducted under the auspices of a registered business. The appeal decision⁴ deals with a building that was being used for the storage of materials, tools and equipment that were not for agricultural use. The building in this case is vacant and therefore the appeal decision is not directly comparable. The appeal decision⁵ does not appear to be supported by financial information concerning the activities on site, where in this case the commercial nature of the use has been substantiated and is clearer than in the example case. The appeal decision is not therefore directly comparable.
15. The fact the building in this case was labelled under a historical application is not substantive evidence about its historical use. Especially considering that under that application the building in this case would have been a peripheral consideration and therefore the accuracy of its label may have been overlooked at the time. Furthermore, even if the appellant bought the dwelling and the outbuildings without the intention of using them as part of an established agricultural unit, there is no evidence to suggest that they were in fact used for domestic purposes.
16. This aspect of the Council's case is limited and does not overcome the collective weight associated with the other strands of the appellant's case which point towards the last use of the building as being agricultural in nature. Overall, and on balance, the building was used solely for agriculture when it was last in use and was part of an established agricultural unit on or before 20 March 2013. Consequently, the proposal is permitted development under Schedule 2, Part 3, Class Q.1 of the GPDO.

² Paragraph: 028 Reference ID: 13-028-20140306

³ APP/P1133/W/17/3191645

⁴ APP/C1435/W/17/3191024

⁵ APP/J1860/W/17/3178383

Prior Approval

17. Even though the Council did not engage in the assessment of the proposal under the relevant prior approval matters, it appears that they consulted with relevant bodies pursuant to such matters and these have been considered where appropriate.
18. Part 3, paragraph W.(5) requires the Council to consult with the highway authority in relation to a material change in the character of traffic in the vicinity of the site, and there is a consultation response from the highway authority submitted under the appeal raising no objection.
19. Access to the site is achieved via a single track from the north and the south, serving the existing dwelling at the site. There is no evidence to suggest that additional, small scale residential development would change the character of volume of traffic using the existing access points. Consequently, it is unlikely to generate unacceptable effects, and this is reflected in the highway authority's response to the proposal. It would therefore comply with Class Q.2 (1)(a) of the GPDO.
20. Notwithstanding the historical agricultural activities on the site, the building subject to the appeal currently sits within a residential context, and therefore is not exposed to potentially noise generating development. The building could be used for agricultural development in the future and therefore, the proposal would deliver a use that reduces the risk of noise generating effects on the adjacent residential development that already exists at the site.
21. The site is within proximity of the M5 Motorway and there are comments from the Council's regulatory services relating to noise and living conditions. The Council has stated that this is not part of the assessment under the prior approval category for noise and nuisance which is more relevant to farm activities.
22. There is no evidence in front of me establishing that noise from the M5 Motorway is likely to be harmful or that it should be considered as a prior approval matter, and a condition relating to British Standards is not necessary. Altogether, the proposal would comply with Class Q.2 (1)(b) of the GPDO.
23. The appellant has confirmed that the building has not been used to store potentially contaminating material, and that no known contamination events have taken place nearby. There is no evidence to suggest that the site is or has been historically contaminated. Consequently, the proposal would comply with Class Q.2 (1)(c) of the GPDO.
24. Part 3, paragraph W.(6) requires the Council to consult with the Environment Agency regarding flood risk, where the proposal meets the relevant criteria. There is no evidence to suggest the site is within Flood Zones 2 or 3, or that it has critical and notifiable drainage problems. There is no evidence to demonstrate that the proposal would put people at unacceptable risk of flooding, and it would therefore comply with Class Q.2 (1)(d) of the GPDO.
25. The building is located within the vicinity of existing residential development, on an agricultural holding with historical activity. The existing character of activity is residential in nature, and therefore it would not be impractical or undesirable for the change of use to take place. Consequently, the proposal would comply with Class Q.2 (1)(e) of the GPDO.

26. The building would retain largely the same external character and appearance, with existing brickwork to be retained along with fenestration openings. Changes to the roof are proposed, which would comprise the removal of corrugated sheets and the introduction of natural slate. This is something that would be more in keeping with its proposed residential use. Altogether, the proposal would comply with Class Q.2 (1)(f) of the GPDO.

Other Matters

27. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on decision makers to consider relevant Directives and whether there is a reasonable likelihood of European Protected Species being present and affected by development. There is no credible evidence suggesting that there is a reasonable likelihood of protected species being affected, and this is reflected in the appellant's submitted ecological report. Consequently, the proposal is in accordance with the relevant regulations. A number of interested parties raise concerns about rights of access. However, this is a private matter and not something I can consider under Class Q of the GPDO.

Conditions

28. Any prior approval and planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO is subject to the condition under Q.2 (3) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date.

Conclusion

29. For the reasons given, the appeal is allowed, and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class Q (a) and (b) of the GPDO.

Liam Page

INSPECTOR