



Appeal Decision

Site visit made on 25 September 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 7th December 2020

Appeal Ref: APP/Z3825/W/19/3242825

The Barn, The Granary & White House, Holmbush Manor Farm, Hayes Lane, Slinfold, Horsham, West Sussex RH13 0SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and 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 Dr Fanous against the decision of Horsham District Council.
 - The application Ref DC/19/1131, dated 17 May 2019, was refused by notice dated 22 July 2019.
 - The development proposed is to convert three existing farm buildings to three dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) provides that planning permission is granted for the classes of development described as permitted development in Schedule 2. Article 3(2) provides that any permission granted by Article 3(1) is subject to any relevant exception, limitation or condition specified in Schedule 2.
3. Paragraph W(3) of Schedule 2, Part 3 of the GPDO sets out that an application may be refused where the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in that Part as being applicable to the development in question.
4. Paragraph X of Part 3, Schedule 2 of the GPDO provides definitions for various terms used in Part 3. To be development permitted by Class Q, the proposal must also comply with the definitions relevant for that class, including the definition of 'curtilage'. As this was not addressed in detail in the main parties' appeal submissions, comments were invited from the main parties on whether the areas of curtilage proposed met the definition. I deal with this matter below.

5. Since the Council issued its decision, the GPDO has been amended¹ to include additional information requirements and a further prior approval matter to Class Q. However, under transitional provisions any planning permission granted by Class Q in relation to an appeal lodged within 6 months of the date of notice of refusal of a prior approval application submitted before 1 August 2020 continues to have effect as if the amendments had not been made. As the application was submitted before the relevant date, it is not necessary for me to consider those new requirements in this appeal.

Main Issues

6. The main issues are:
- i) whether the proposal would comply with the conditions, limitations and restrictions applicable to Class Q of Part 3, Schedule 2 of the GPDO and therefore be permitted development, in particular paragraph Q.1.(a) and the definition of curtilage; and
 - ii) if so, whether prior approval would be required for the matters set out in paragraph Q.2(1) of the GPDO.

Reasons

7. Q.1.(a) sets out that development is not permitted by Class Q if, "*(a) the site was not used solely for an agricultural use as part of an established agricultural unit – (i) on 20 March 2013 [‘the relevant date’] 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*".
8. The evidence before me is that the buildings were part of an established agricultural unit involved in egg production/packing until that activity ceased in the late 1990's, then the farm was leased as a chicken farm for a period, after which more ad-hoc agricultural use took place, including use by people other than the appellant. The evidence presented in relation to storage of sheep handling equipment is not specific to the appeal buildings, therefore I can give it very little weight. However, the appellant's statutory declaration is specific to the appeal site, and states that all three buildings have been, "*solely used for agricultural purposes in an established agricultural unit since 1987 and was [sic] solely used in agriculture on the relevant date of 20th March 2013*".
9. The Council has drawn my attention to various aspects of the site's planning history, including appeal decisions, which suggest that there were other activities taking place on the wider farm in the late 1990's. There is however no requirement in the GPDO that an 'established agricultural unit' must be solely used for agricultural purposes and cannot include other ancillary uses, which are common on many farm holdings. The requirement to be solely used for agriculture relates only to the site for which prior approval is sought, and importantly, none of the documents referred to relate specifically to the site and buildings subject of this appeal. As such, there is no compelling evidence that other activities were taking place on the appeal site either at the time of the other decisions, or on the relevant date.

¹ Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

10. The Council's detailed site visit evidence on the content and potential use of the appeal buildings dates from 2016 onwards and as such post-dates the relevant date. The appellant has explained the need to prevent access to the buildings due to vandalism, which I saw some evidence of at my site visit. From the evidence before me, it is far from clear that a material change of use of any of the buildings had taken place by 2016. In any event, Class Q does not include any limitations or restrictions on the use of a site after 20 March 2013. Therefore, even if there had been a material change of use of any part of the site since that date, it would not result in any conflict with the requirements of Class Q. Nor does the fact that the buildings are now vacant preclude compliance with Class Q.1.(a).
11. Consequently, while the former intensive agricultural use of the farm had evidently ceased by 2013, there is no substantive evidence before me that any part of the appeal site was being used for any purpose other than agriculture on the relevant date, or that it was no longer part of an established agricultural unit. Even if the agricultural use of the buildings had ceased by the relevant date, it has not been demonstrated that their last use was not for agriculture. Therefore, the Council's representations are insufficient to show that the situation was otherwise than as stated in the appellant's declaration. Accordingly, I consider that the proposal would satisfy Q.1.(a).
12. Nevertheless, Class Q only permits: *"Development consisting of - (a) a 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 Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule"*.
13. For the purposes of Class Q, Paragraph X of Schedule 2, Part 3 defines 'curtilage' as: *"(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser"*.
14. The application form states that 420.6m² of floor space of existing buildings are proposed to change use. It is unclear how this figure has been calculated however, as it exceeds the combined Building Areas specified on the Block Plan and the combined total floor areas set out on the submitted floor plans.
15. The form also states that 420.6m² of land within the curtilage of the buildings is proposed to change use. There are differences between the Council's calculation of the footprint of each building and the appellant's stated floor areas. However, even using the higher figure in each case, the total area proposed as curtilage would be substantially larger than the total land area occupied by the three buildings. As such, the figure on the application form would not comply with the definition of curtilage.
16. A 'Curtilage Area' for each building is also specified on the Block Plan. In each case however, this would exceed the land area of the relevant building, irrespective of which main party's figures for the footprint of that building are used. As such, the Curtilage Areas would also not meet the definition of curtilage.

17. Alternatively, red lines are drawn around each building on the Block Plan. Although labelled in the key as 'Site Boundary', they include areas of land immediately around the buildings and could therefore represent the proposed curtilages. The Council has calculated the areas of land within the red lines, excluding the buildings, which the appellant has not disputed. Those around The Barn and the Granary exceed the land area of the buildings and therefore do not meet the definition of curtilage.
18. The area of land outlined around the White House would be smaller than the land area of that building and would therefore fall within the definition of curtilage. However, the appeal proposal seeks prior approval for the development of all three buildings, and I must therefore consider the proposed development as a whole.
19. Accordingly, although the proposal complies with Q.1.(a), there is a lack of clarity relating to the extent of the proposed curtilages in this case. Therefore, based on the evidence before me, I cannot conclude with any certainty that the proposed development complies with the conditions, limitations and restrictions applicable to Class Q of Part 3, Schedule 2 of the GPDO. It is not therefore permitted development.
20. Given my conclusion on this matter, it has not been necessary for me to consider the other limitations, conditions and restrictions or prior approval matters applicable to Class Q, or other matters raised by the Council and interested parties.

Other Matters

21. The proposed curtilages were amended during the application process following discussions with the Council, without the above matters having apparently been raised. However, I can only base my assessment on the evidence before me, which does not demonstrate compliance with the GPDO.
22. The appellant also advises that they would accept a condition limiting the curtilages to the definition, but have not suggested any wording. Paragraph W(12) sets out the standard conditions that developments under Class Q must comply with, and W(13) sets out that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. Establishing the proposed curtilage is not related to a prior approval matter and as such I cannot deal with it by a condition.
23. As this appeal relates to a prior approval under Class Q of the GPDO and not an application for full planning permission, I cannot have regard to any considerations outside of those specified in the legislation, such as site security or potential other uses of the land by other parties.

Conclusion

24. Therefore, for the reasons given above, the appeal is dismissed.

L McKay

INSPECTOR