



Appeal Decision

Site visit made on 17 May 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2021

Appeal Ref: APP/E2205/W/20/3258251

Daniels Farm, The Pinnock, Pluckley, Kent TN27 0SY

- 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 (GDPO) as amended.
 - The appeal is made by Ms L Tibbs and Mr J Fenn against the decision of Ashford Borough Council.
 - The application Ref 20/00595/AS, dated 11 May 2020, was refused by notice dated 13 August 2020.
 - The development proposed is for prior approval for change of use from one agricultural barn and land within its curtilage to one dwelling house and associated operational development.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs L Tibbs and Mr J Fenn against Ashford Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. I have used the description of development from the Council's decision notice since this more precisely and accurately describes the proposal.

Main Issues

4. The main issues are:
 - whether or not the proposed change of use constitutes permitted development pursuant to Class Q of Part 3 of Schedule 2 to the GPDO, and;
 - whether a trade or business pursuant to Paragraph X, Part 3, of Schedule 2 of the GPDO associated with the appeal building has been demonstrated.

Reasons

Class Q

5. The appeal site is located adjacent to Dering Wood and pasture type land at the end of a long access road that runs through the fields associated with the former 'Daniels Farm', where a chalet-bungalow residential dwelling known as 'Clover Farm' can be seen on the left-hand side.

6. The appeal building is an open-ended corrugated metal barn with a rough oil/fuel stained floor that faces towards two barn-type buildings with a satellite dish to one side.
7. To the left-hand side of the barns when viewed from the appeal structure there are a number of concrete hard-standings related to barn type structures which are no longer standing. The appeal building has a water, gas and bottled gas supply, and to the rear of the building there is a caravan which appears to be occupied. The proposal is to build a 3 bedroom dwelling on the appeal site for two family members.
8. My attention has been drawn to a number of appeal decisions dated 2014 and 2015¹ in support of the Appellants' case. These are noted. However, I have limited details of those schemes before me. Therefore, I have considered the proposal before me on its own merits.
9. As such, to benefit from the permitted development rights under Class Q regard must be given to whether or not the building was solely in agricultural use, as part of an established agricultural unit, on 20 March 2013; or if not in use on that date, for a period of at least 10 years before the development date under Class Q begins.
10. With this in mind, at my site visit while there were no animals grazing in the adjacent fields I noted that a small number of cut hay bales could be seen to the rear of the barn. However, whether the building has been used for the storage of white or other goods or not, I noticed that the barn had extensive oil/fuel staining to the floor. As such, it is likely that there has been storage and/or parking of motor vehicles over some period of time in the barn, possibly in addition to the short-term storage of vehicles in the barn by the Appellant or others that was seen by Council Officers in 2016 and 2019 during site visits related to other matters. Moreover, during these visits it was also noted that no agricultural-type activity was being undertaken in the barn. Indeed, the minimal quantity of hay seen in the relatively large barn at the time of my site visit and the condition of the oil/fuel stained barn floor suggests that larger quantities of hay storage have not been a frequent or recent occurrence in the barn, or critically the only use of the building.
11. I acknowledge that the Appellant has confirmed in the form of signed letters that the building was used between 2011-2020 for the purposes of storing cut hay, and that the paddocks have been used for grazing. Nonetheless, I have limited independent or other evidence before me to confirm the amount of hay grown or stored over recent years, months, weeks, or days, including 20 March 2013, to demonstrate that the barn has been in sole agricultural use. Moreover, if the building was not in use on 20 March 2013 for such purposes, 10 years are yet to expire for Class Q to render the building as part of an established agricultural unit.

Paragraph X

12. In respect of the use of the building, an 'agricultural building' is defined in Paragraph X, Part 3, Schedule 2 of the GPDO as a building used for agriculture and which is so used for the purposes of a trade or business; and 'agricultural use' refers to such uses.

¹ APP/Y3940/W/15/3002938, APP/X1925/A/14/2223832 APP/P1133/W/15/3025096 APP/X1118/W/15/3035859

13. The requirements in Paragraph X do not oblige the trade or business to make a profit. However, notwithstanding guidance provided in 'A Farmer's Guide - Agricultural Permitted Development Rights in the South Downs National Park 2019', I have little evidence or documentation before me associated with the grazing and hay cutting activity in order to convincingly substantiate an established and ongoing commercial business arrangement. Indeed, from the limited evidence before me, the arrangement for the storage and cutting of hay appears to be one of exchange rather than a formal business type activity. Moreover, whether some of the hay was sold on or not, the signed letters provided by the Appellant refer to arrangements that seem to have expired.
14. Additionally, it has been brought to my attention that the proposal could not constitute permitted development having regard to the definition of curtilage set out in Paragraph X of Part 3, Schedule 2 of the GDPO as the Council has confirmed that the proposal does not comply with this definition, which says that the curtilage should be an area of land immediately beside or around the agricultural building, and should be no larger than the land area occupied by the agricultural building. Consequently, even if the building had been in sole agricultural use as described in Class Q for the purposes of business or trade, the appeal would have to fail purely on this basis alone.
15. Therefore, based upon what has been presented to me, I am not satisfied that there is conclusive evidence that the building was in sole agricultural use on either 20 March 2013 or when last used. Moreover, I am not persuaded that the appeal building was used for the purposes of trade or business. Accordingly, the appeal proposal fails to demonstrate compliance with Class Q and Paragraph X of Part 3, Schedule 2 of the GPDO. As such, it does not constitute permitted development.

Other Matters

16. I am mindful of the family's personal circumstances and caring arrangements, and that the intention is for two family members to live in the proposed dwelling. However, in this case the appeal does not turn on these matters or outweigh the requirements of the GDPO.
17. I note the planning history related to the appeal structure and the surrounding buildings, including schemes of some vintage that were not implemented. However, any planning obligations associated with those schemes do not form part of my consideration in this separate appeal case. Indeed those matters, whether by variation or discharge of the planning obligations, are for the main parties to agree upon.

Conclusions

18. For the above reasons I conclude the proposal would not be permitted development under the terms of Class Q of the GDPO and would require the express grant of planning permission rather than consent via the prior approval process. Therefore, the appeal is dismissed.

J E JOLLY

INSPECTOR