
Appeal Decision

Site visit made on 14 September 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th September 2021

Appeal Ref: APP/N1730/W/21/3270244

Nyasaland, Crondall Road, Crookham Village, Fleet GU51 5SU

- 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.
 - The appeal is made by Mr Richard Potts against the decision of Hart District Council.
 - The application Ref 20/03146/PRIOR, dated 21 December 2020 was refused by notice dated 18 February 2021.
 - The development proposed is change of use of existing agricultural building into three 3 bedroom dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form and decision notice, as it more accurately describes the proposal than the description on the planning application form.
3. Schedule 2, Part 3, Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015¹ (GPDO) sets out the prior approval process. It states² that the local planning authority may refuse an application where, in its opinion, 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 as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.
4. The Council's reason for refusing the application includes the failure of the appeal scheme to meet the fundamental qualifying criteria set out in Paragraph Q.1 (i) of Schedule 2, Part 3, Class Q³ of the GPDO, since, on the basis of the information submitted with the planning application, the Council considered that the proposed works would comprise a rebuild of the building and would go beyond the scope of works permitted by Class Q.
5. The Council's statement of case has confirmed that a subsequent prior approval application in respect of the proposed conversion of the appeal property into 3

¹ SI 2015 No.596

² Paragraph W.(3)

³ SI 2018 No.343

dwelling⁴ included additional information in respect of the structural condition of the steel frame of the existing barn, confirming that it was structurally sound and suitable for the proposed conversion. Since the appeal scheme relates to the same building, the Council has confirmed that the appeal proposal meets the criteria of Paragraph Q.1 (i). I have dealt with the appeal accordingly, acknowledging that this element of the Council's reason for refusal has been addressed.

Main Issues

6. The main issues are:

- Whether the proposal would be permitted development (PD) under Schedule 2, Part 3, Class Q of the GPDO; and
- If so, whether or not prior approval would be required in accordance with the conditions set out in Paragraph Q.2 (1) of the GPDO.

Reasons

Whether the proposal would be permitted development

7. The building, to which the appeal scheme relates is a vacant steel portal framed barn. It is divided into 5 bays and has a mono-pitched corrugated steel clad roof. The front is completely open. The rear elevation is fully enclosed by corrugated steel sheeting, concrete blockwork and timber. One side is enclosed by vertical timber boarding above a concrete block plinth wall and the other side is open at lower level below vertical timber boarding on the upper part. The ground within the barn includes areas of chalk and broken hard core.
8. The barn forms part of a group of buildings surrounded by fields to the north, south and west, which are within the appellant's ownership and share vehicular access from Crondall Road.
9. Directly facing the appeal building is another 5-bay barn of a similar design and size, with a partially enclosed frontage, which the appellant has confirmed has been used for commercial storage. To one side of the appeal barn there is a dilapidated single storey timber building with a lean-to, and on the opposite side of the access track, there is an abandoned mobile home.
10. The proposal is to convert the barn into three single storey, 3-bedroomed dwellings, each with a floor area of less than 100 square metres, comprising "smaller dwellinghouses" under Paragraph Q.3 of the GPDO.
11. Class Q 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) or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use. The appeal relates to development under both Q(a) and Q(b), so that the proposal relates to the change of use to residential as well as associated facilitating works.
12. Development is not permitted under Class Q.1 (a) if the site was not used solely for an agricultural use as part of an established agricultural unit -

⁴ Ref 21/00839/PRIOR

- (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, or
 - (iii) in the case of a site which was brought into use after 20 March 2013, for a period of at least 10 years before the date development under Class Q begins.
13. The appellant states that the barn to be converted was used for agricultural purposes on 20 March 2013 and that the building, which lies within a smallholding in excess of 4 acres, was used for the keeping of livestock between 1982 and 2017. The appellant cites the existing chalk floor, mangers, and presence of faecal matter and straw as evidence of this former agricultural use. In addition, reference is made to the Crookham Village Parish Council Questionnaire of February 2013 where comments made by a local resident included reference to Nyasaland as being used as a smallholding.
14. The appellant has also submitted a statutory declaration from a local resident which relates to the appeal site, adjacent buildings and surrounding fields. Amongst other things, this states that cattle grazing began on the land around 1982 and that the last bull died in 2017 and that the occupier of the land from between 1980 and 2015 used the mobile home as his sole residence.
15. The statutory declaration confirms that 3 of the 10 bays that make up the appeal site barn and that directly opposite it, were used for the keeping of livestock and that one bay was used for the store of winter feed between 1982 and 2017. The statutory declaration does not make it explicitly clear with reference to a plan, which bays are referred to. It also states that the remaining bays were used for storage purposes between 1982 and 2018 by the site occupier and his friends for farm and landscape vehicles, equipment and machinery for industrial and commercial use. This suggests that the building, the subject of the appeal, may not have been solely in agricultural use on the relevant date.
16. Consultation responses from local residents in respect of the prior approval application and appeal also suggest that the appeal site has had a mixed use, including the storage of commercial equipment by businesses such as landscapers and driveway contractors. They also claim that any agricultural use was small-scale and limited to the keeping of 2 animals more akin to pets than as a viable agricultural concern, and that there was little upkeep of the fields and no arable crops. As such, it is alleged that there was a minimal agricultural element within the overall business use of the land.
17. This view is supported by the statutory declaration supplied by the appellant, which confirms that the timber building adjacent to the appeal barn was used by building and property maintenance specialists for the storage of equipment associated with the building industry until 2017. Whilst this building lies outside the application site, it shares the same access and falls within the wider aforementioned smallholding.
18. In addition, the Council refers to observations made by a visiting Planning Officer when dealing with an application⁵ to retain the mobile home in 2006, which noted the presence of 2 cattle in part of one of the two open-fronted

⁵ Ref 06/00555/MAJOR

barns with some straw storage in another part of the same barn, but no apparent evidence of any other agricultural activity at the site. The Officer also confirmed evidence of non-agricultural storage within the barns.

19. For the purposes of Schedule 2 Part 3 Class Q an “agricultural building” is defined as a building (excluding a dwellinghouse) used for agriculture *and* (my emphasis) which is so used for the purposes of a trade or business, and “agricultural use” refers to such uses. Whilst there is no requirement for the trade or business to be of a given scale or size, or to be viable, the appellant has not provided any evidence in respect of an agricultural trade or business to which the former livestock keeping related, nor evidence to confirm that the agricultural use was not merely a recreational use. Third Party comments suggest that the livestock that were formally kept in the barn were not kept in association with a trade or business.
20. Accordingly, having regard to the letters of representation from local residents, the appellant’s own supporting information, and evidence from the Council, I find that there is insufficient and conflicting evidence before me, so that I am unable to conclude that the site was used solely for an agricultural use as part of an established agricultural unit as required by Class Q.1 (a). As such, having regard to the above, I find that the Council was justified in refusing the prior approval application, having regard to Paragraph W.(3) of the GPDO.
21. In reaching my decision, I have applied the advice within the Planning Practice Guidance⁶ (PPG) in respect of applications for certificates of lawfulness, which sets out that for applications concerning an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
22. In this instance, there is evidence before me to suggest that the keeping of livestock on the appeal site was no more than a recreational or hobby use, and that it was not the sole use of the site. As such, I cannot conclude, on the balance of probabilities, that the site is an established agricultural unit for the purposes of Class Q.1
23. I have had regard to a Counsel Opinion provided by the appellant which comes to a different conclusion, on the basis of the evidence before the author, and on the balance of probabilities. However, I note that the author did not visit the site, and that the Counsel Opinion relies on a number of factors, including that the building the subject of the appeal was used for keeping of livestock from 1982 until 2017, that the bays referred to in Paragraph 11 of the appellant’s statutory declaration are the bays which relate to the building which the appeal scheme relates, and that the ‘remaining bays’ referred to in Paragraph 12 relate to a different barn.
24. Furthermore, the Counsel Opinion gives weight to the Parish Council consultation response which describes the site as a ‘smallholding’ being consistent with an agricultural use, and finds that there is a lack of evidence contrary to the statutory declaration. No mention is made of the representations in response to the application and appeal, which suggest that

⁶ Paragraph: 006 Reference ID: 17c-006-20140306

the agricultural activity carried out on the site was not in association with a trade or a business and did not comprise the sole use of the site.

25. My attention has been drawn to letters of representation in respect of a separate planning application⁷ in respect of a different part of the wider site of Nyasaland for the replacement of the mobile home with a permanent dwelling which, the appellant states suggest an agricultural use of the wider site. I am not persuaded, on the basis of the letters included within the appellant's statement, that my findings on this matter should be altered.
26. I note that whilst the planning history of the site confirms that there was a previous consent for the temporary siting of an agricultural worker's mobile home, the retention of this home was refused in 2006. The Council has confirmed that during the consideration of that application, it sought further information regarding the agricultural business that was in operation at the time, but that the applicant failed to provide any evidence either in terms of the financial viability of the business or the operational need, and that the Planning Officer, during the site visit, found no apparent evidence of any other agricultural activity on the site, aside from the housing of 2 cattle in one of the open fronted barns along with the storage of straw in the same barn.
27. I have also had regard to an appeal decision submitted by the appellant⁸. The PPG states that the applicant is responsible for providing sufficient information to support an application. In the case of that appeal, the appellant had submitted supporting documents, including letters from an accountant and vet, which referred to a livestock farming business. However, in the case of the current appeal, no such evidence is before me. In any event, each case must be judged on its own merits, and I must determine the appeal on the basis of the particular circumstances of the appeal site and on the merits of the scheme before me.

Curtilage

28. The Council's reason for refusal reason also refers to the failure of the proposal to comply with the maximum curtilage size prescribed in Paragraph X of Class Q. Drawing nos. S101 Rev B, P101 Rev B, and P102 Rev B show a thin red line which is annotated on the drawings as "Application Site Boundary Line". This thin red line is consistent on all 3 drawings. In accordance with Paragraph W. (2) (b) it indicates the site, ie the building and any land within its curtilage, and comprises the area where new built development is proposed, including the building to be altered and converted to residential units together with the proposed outside amenity areas and footpath accesses to each dwelling. The size of the proposed curtilage accords with the requirements of Part 3 Paragraph X of the GPDO.
29. Drawing S101 Rev B includes a thicker red line in addition to the aforementioned thin red line, which incorporates an additional area of land to the north and northeast of the barn and includes the access track to Crondall Road. It is on the basis of this red line that the Council considers that the proposal fails to accord with the curtilage limitation of Class Q. The evidence before me is that the Council requested that access to the highway be shown on the application location plan, and the thicker edging to this part of

⁷ Ref 21/00202/FUL

⁸ Ref APP/G5180/X/16/3151746

the red line suggests that this element was a later addition to the drawing. Since Paragraph W.(2) (b) does not require a red-lined plan around the site showing access to a highway, I am not persuaded, on the basis of the evidence before me, that this constitutes a reason for refusing the application. Notwithstanding this, this matter is not determinative of my decision, having regard to my aforementioned findings in respect of the use of the appeal site.

Prior approval

30. Given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required, as it would not alter the outcome of the appeal.

Other Matters

31. The site lies within the zone of influence of the Thames Basin Heaths Special Protection Area (SPA), which is an internationally designated site of nature conservation importance. The appeal scheme is likely to have a significant effect in combination with other plans and projects on the SPA.
32. Article 3(1) of the GPDO grants planning permission for the classes of development described as PD in Schedule 2, subject to Regulations 75 - 78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017, that development which, (a) is likely to have a significant effect on a European site or a European offshore marine site, alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site, must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77.
33. The Regulation 77 application may be submitted and approved after prior approval is given for the development, and it would be for the local planning authority to determine, outside the scope of the prior approval process. As such, and, having regard to my findings on the first main issue, there is no need for me to consider the implications of the proposal on the SPA.

Conclusion

34. For the reasons given, and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
35. The appeal is, therefore, dismissed.

S Leonard

INSPECTOR