



Appeal Decision

Site visit made on 19 October 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2021

Appeal Ref: APP/J1535/W/21/3270393

Fernbank Nursery, Nazeing Road, Nazeing EN9 2JN

- 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 Stallan Nazeing Limited against the decision of Epping Forest District Council.
 - The application Ref: EPF/2727/20, dated 23 November 2020, was refused by notice dated 18 January 2021.
 - The development proposed is a notification for prior approval for proposed change of use of agricultural buildings to dwellinghouses (Use Class C3) and associated operational development (for the conversion of 5 dwellings).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Class Q. (a) together with Class Q. (b) of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permit the change of use of an agricultural building and land within its curtilage to a residential use falling within Class C3 (dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the building operations reasonably necessary to convert the building to that use.
3. The Council refused the application on the grounds that there was insufficient evidence submitted to demonstrate that the 5 units in question are structurally substantial to accommodate the conversions without any rebuilding. This is of relevance to the limitation set out under paragraph Q.1. (i) that development is not permitted under Class Q(b) where it would consist of building operations other than the (i) installation or replacement of (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1.(i)(i);
4. The Council did not have the benefit of a Structural Report when the application was considered. The appellant has provided such a document¹ with

¹ Report on Agricultural Buildings, dated 26 February 2021

the appeal. As the Council and interested parties have had the opportunity to comment on it during the appeal, there is no prejudice and I have considered it in my decision.

5. Following the submission of the appeal, the appellant informed that the landowners had agreed an agricultural tenancy with a 3rd party and accordingly served notice on that party. The party subsequently confirmed that it had taken out an agricultural tenancy on the land and was growing salads and vegetables for the wholesale market. The party objected to the proposal, the implications of which I consider later in my decision.
6. As a consequence, the limitation set under paragraph Q.1. (e) that development is not permitted if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained, is also of clear relevance to my decision.
7. The revised National Planning Policy Framework (revised Framework) has been published since the Council made its decision. The main parties have had the opportunity to comment on this matter during the course of the appeal.

Main Issue

8. Taking into account the above, the main issue is whether the proposal is permitted under Schedule 2, Part 3, Class Q, paragraph Q.1 (e) and (i) of the GPDO.

Reasons

9. The buildings that are the subject of the proposed change of use are dispersed amongst a number of large glasshouse structures and other buildings. At the time of my visit, at least some of these were in use for horticultural purposes and there seems to be no dispute between the main parties that the site overall is in agricultural use. The agricultural unit itself is of a considerable size due to the presence of the glasshouses. In terms of its surroundings, the site lies close to the existing residential uses in Nazeing, as well as a parade of shops. Access is taken to the site between these uses and on to the B194.
10. Paragraph Q.1 (e) does not in itself indicate that a development cannot be permitted if it is under an agricultural tenancy. In this case, the appellant has acknowledged that there is such a tenant by virtue of the serving of the notice. However, express consent must be given by the tenant. This is of relevance in relation to the objection of the party in question. A tenancy agreement has also been provided by that party.
11. The appellant has stated that they have no knowledge of this tenancy and that no submissions were made at the time of the appeal application, as well as that the tenancy agreement is not between the appellant and the tenant. The appellant has also advised that they have a contractual position with the landowners which confirms they must advise of any tenancies that they enter into and which it is contended has not been done in this case.
12. However, as the party has objected to the proposal during the appeal, express consent of the tenant cannot be reasonably said to have been obtained. This is irrespective of the merits of the appellant's or the party's position. As a consequence, the proposal is not permitted under paragraph Q.1. (e).

13. The buildings that would be the subject of the proposed change of use are in varying states of disrepair. Units 1 and 2 are largely similar structures constructed of mainly corrugated sheet walls and roofs that are attached to steel frames. The Structural Report confirms they are in poor condition, and this was apparent from my site visit. Nevertheless, and whilst the main structural elements would require refurbishing, it is not the case that they are structurally unsound, based on the evidence before me. The ambit of works that are permitted under paragraph Q.1. (i) (i) are also broad and I am not persuaded that the refurbishment works would be anything other than to the extent reasonably necessary for the buildings to function as dwellinghouses.
14. Units 3 to 5 are constructed of blockwork or brick walls, with metal sheet or barrel roofs. They appear to be in fair condition, which is also borne out by the Structural Report. The refurbishment works that would be required would also fall within paragraph Q.1. (i) (i). For all of the buildings, the element of partial demolition that would be required would be minor for the purposes of paragraph Q.1. (i) (ii).
15. I am mindful that the details of the refurbishment works that are before me and would be required are of a limited nature. However, the Structural Report does provide sufficient confidence that the limitation of paragraph Q.1. (i) would be adhered to. Matters of asbestos removal have also been raised, although this is not precluded under the limitation as exterior walls, or roofs, can be replaced. Overall, the proposal would meet the limitation of paragraph Q.1. (i).
16. For a proposal to be permitted development, it must meet all of the relevant limitations. Hence, irrespective of this proposal adhering to paragraph Q.1. (i), the proposal cannot be development that is permitted by Class Q because it does not meet the limitation under paragraph Q.1. (e).

Other Matters

17. As I have found the proposal falls outside of permitted development, there is no requirement for me to make a determination of the prior approval matters related to transport and highways impacts; noise impacts; contamination and flooding risks; whether the location or siting of the development makes it otherwise impractical or undesirable for the use of the building to be changed; the design or external appearance; and the provision of adequate light to all habitable rooms. The same applies in relation to other matters that interested parties have raised. Nor does the revised Framework alter my view on the considerations that I have set out above.

Conclusion

18. The proposal fails against the limitation set out by paragraph Q.1.(e). As a result, it would not satisfy the requirements of Class Q of Schedule 2, Part 3 of the GPDO and, therefore, is not development permitted by it. For this reason, the appeal should be dismissed.

Darren Hendley

INSPECTOR