



## Appeal Decision

Site visit made on 14 December 2021

**by Rachel Hall BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 February 2022**

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### **Appeal A Ref: APP/G1630/W/21/3279781**

#### **2 Warren Fruit Farm, Evesham Road, Greet, Cheltenham GL54 5BN**

- 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 Michael Keeley against the decision of Tewkesbury Borough Council.
- The application Ref 21/00357/PDAD, dated 11 March 2021, was refused by notice dated 20 May 2021.
- The development proposed is conversion of an agricultural building to one smaller residential dwelling falling within use Class C3 together with associated works reasonably necessary for the conversion.

### **Appeal B Ref: APP/G1630/W/21/3280097**

#### **Smallholding Plot 11, Warren Fruit Farm, Evesham Road, Greet GL54 5BN**

- 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 Michael Keeley against the decision of Tewkesbury Borough Council.
  - The application Ref 21/00363/PDAD, dated 13 March 2021, was refused by notice dated 20 May 2021.
  - The development proposed is conversion of an agricultural building to one smaller residential dwelling falling within Use Class C3, together with associated works reasonably necessary for the conversion.
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## **Decision**

1. The appeals are dismissed.

## **Background and Main Issues**

2. As the description of development was not specified on the application forms, the above descriptions are taken from the appellant's appeal forms which are broadly consistent with those on the Council's decision notices.
3. Appeals A and B are separate appeals relating to different plots of land on Warren Fruit Farm. I have considered each proposal on its individual merits. However, and as the circumstances in both cases are similar and there is evidence common to both, I have dealt with the two schemes in one decision drawing distinctions between the two individual schemes as necessary. Appeal A is referred to in the appeal documentation as plot 2 and I refer to it as such here.

4. I note reference to a long contested planning history for the appeal sites and wider farm, including involvement with the Council's enforcement team. However, those are separate matters and I have determined the appeals fairly on their own merits on the submitted evidence.
5. Schedule 2, Part 3, Paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) states that the local planning authority may refuse a prior approval application 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 as being applicable to the development in question.
6. It was on the above basis that the Council refused to grant the prior approvals. I note in both appeals the duration between the relevant application being made and the Council's decision exceeds the 56 day period specified in GPDO paragraph W.(11). However, as reasoned subsequently, that is not in itself determinative; in order to benefit from prior approval, development proposed must fall wholly within what is permitted development. I return to that point.
7. The proposals relate to Schedule 2, Part 3, Classes Q(a) and (b) of the GPDO, which enable the change of use and conversion of an agricultural building to a dwellinghouse. That is subject to certain limitations, paragraph Q.1, and conditions, paragraph Q.2.
8. Under paragraph Q.1.(a) of the GPDO, the proposal would not be permitted development if the site was not used solely for an agricultural use as part of an established agricultural unit within the timeframes specified in paragraph Q.1.(a)(i)-(iii). Paragraph X of the GPDO defines 'established agricultural unit' as agricultural land occupied as a unit for the purposes of agriculture. 'Agricultural use' is also defined in paragraph X, with reference to being used for the purposes of a trade or business.
9. The appeals are submitted on the basis that plots 2 and 11 comprised separate established agricultural units on 20 March 2013. Indeed they relate to separate applications and appeals. Therefore, the first main issue is whether it has been demonstrated that plot 2 and plot 11 were used for agriculture for the purposes of a trade or business, as part of separate established agricultural units on 20 March 2013, and hence would comply with Schedule 2, Part 3, Class Q, paragraph Q.1.(a)(i) of the GPDO.

## **Reasons**

10. The appellant, as landowner, has submitted separate statutory declarations for plots 2 and 11, dated March 2021. These state that plots 2 and 11 were operating as agricultural businesses during 2013. Additional signed statements are submitted by the appellant that do not appear to have been signed under oath and are undated. These also state that in March 2013 the two plots comprised separate smallholdings that were in use by private individuals, and that those individuals were members of Warren Smallholders Cooperative (the cooperative).
11. The signed statements indicate that the cooperative was set up to help make farming on the smallholding plots affordable. It is also described as a marketing tool for the smallholders, and various details are provided about

equipment acquired by the cooperative, registrations made in its name to enable movement of livestock between plots, and appointment of an individual (the site contact) to administer the cooperative and liaise with the smallholders.

12. Appended details to the statements include a tractor invoice and letter from the Rural Payments Agency dated 2006, an energy invoice reminder from 2019 and a fuel invoice from June 2013. These, I acknowledge, point to the existence of the cooperative over various timeframes. However, they are not, in and of themselves, evidence of a trade or business having been in operation on plots 2 and 11 as separate agricultural units. An animal movement record made in the name of Warren Smallholders and completed by the site contact indicates that plot 2 (amongst others but not including plot 11) was used for grazing of 16 sheep in March 2013. However, there is no substantive evidence as to whether that grazing was part of a regular or on-going business arrangement with the plot 2 smallholder, or a one-off event. Many rural landowners allow their fields to be grazed intermittently in place of maintaining it via machinery.
13. The appellant's statements list single monthly payments from the cooperative to individuals referenced against plot numbers, including plots 2 and 11, during the course of 2013. The corresponding bank statements for the cooperative are also provided. These are said to be payments for produce grown by the smallholders and sold by the cooperative on their behalf. The payments are described as forming only part of the agricultural business operating on plots 2 and 11 during 2013.
14. This is supported by separate statutory declarations for plots 2 and 11 made by the site contact. These declarations name the smallholders said to have farmed plots 2 and 11 during 2013, which tallies with those named on the bank statements. The smallholders are said to have sold soft fruit (plot 2) and hard fruit (plot 11) along with free range eggs from the farm gate. Both are also said to have supplied produce to a pub for use in its kitchen as well as direct sales to its pub customers.
15. I appreciate there may be challenges in obtaining specific details from the individual smallholders of plots 2 and 11 in 2013. However, aside from the declarations and landowner statements, no specific evidence is provided of the scale of those sales or revenues for either of the plots. There is therefore nothing before me to distinguish them between what might typically be expected from selling incidental or surplus produce from any smallholding run primarily for leisure, hobby or domestic purposes as opposed to on a commercial basis.
16. Furthermore, no business accounts are provided, nor any indication of profit or turnover achieved. Moreover, no invoices or payment records are provided for those specific plots. A further statutory declaration from a smallholder on plot 5 is submitted for both appeals. They reference having sold their own produce in the ways described by the site contact, although again, no supporting evidence is provided and no specific reference is made of the circumstances on plots 2 or 11.
17. The certificates of lawful existing use or development for plots 2 and 11 serve to confirm the Council's view that, on the balance of probability, the building on each plot had existed for more than four years prior to the date of the

certificates, in March 2019<sup>1</sup>. However, the existence of the buildings, even from 2008 when they are indicated to have been brought on to the site, does not evidence that they were in agricultural use for the purposes of a trade or business in March 2013.

18. I accept that a trade or business can be established on small plots of agricultural land. I note the Small is Successful report by the Ecological Land Co-operative (2011) that attests to that fact. I have had regard to other Class Q prior approval appeal decisions submitted by the appellant. However, the specific circumstances of those appeals are not before me. Those decisions that address the principle of whether the proposals were permitted development in accordance with paragraph Q.1(a)<sup>2</sup>, do not appear sufficiently similar to the circumstances of the appeals before me, where a more intricate distinction is required to be demonstrated between the use of smaller agricultural plots and the wider role of the cooperative.
19. I appreciate the appellant has sought to address reasons for refusal on previous prior approval applications made to the Council. However, whilst a finely balanced case, I conclude that it has not been demonstrated that plots 2 and 11 were used for agriculture for the purposes of a trade or business, as part of separate established agricultural units on 20 March 2013. No one factor leads me to arrive at that conclusion, however it is the partial and limited nature of the evidence as a whole that fails to adequately demonstrate that the proposal would be permitted development in the foregoing terms.
20. Accordingly, the proposed developments would not comply with the limitation in paragraph Q.1.(a)(i). As such, neither proposal would comprise permitted development and it is not necessary for me to consider compliance with other relevant limitations and conditions of the GPDO.

## **Conclusion**

21. Therefore, for the reasons given above, I conclude that appeals A and B should be dismissed.

*Rachel Hall*

INSPECTOR

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<sup>1</sup> Ref 18/01300/CLE and Ref 18/01303/CLE

<sup>2</sup> For example, Ref APP/N4720/W/18/3197080