



Appeal Decision

Site visit made on 11 January 2022

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th February 2022

Appeal Ref: APP/Z3825/W/21/3272636

New Barn Nursery, Broadford Bridge Road, West Chiltington, Pulborough, West Sussex, RH20 2LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 GPDO).
 - The appeal is made by Paul a'Barrow against the decision of Horsham District Council.
 - The application Ref DC/21/0251, dated 1 February 2021, was refused by notice dated 26 March 2021.
 - The development proposed is the change of use from an agricultural building to dwellings (C3 Use class).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development in the banner heading above is taken from the application form. The form indicates that the proposal is the change of use to 5 smaller dwellinghouses. The submitted plans indicate an area of land around the appeal building forming its curtilage. I have determined the appeal on this basis.
3. The appeal was submitted against a contended failure of the local planning authority to give notice of its decision within the appropriate period. Article 7(a) and paragraph W(11) of Part 3, Schedule 2 of the GPDO require the local planning authority to notify the appellant as to whether prior approval was given or refused within 56 days of the date it received the application. The application was received and validated on 1 February 2021 so the 56 day period expired on 28 March 2021.
4. The Council contends that it determined to refuse prior approval on 26 March 2021 with the decision notice dated the same day. Screen grabs provided by the Council indicate that it was sent to the appellant's agent at 11.28 on 26 March 2021. Although the appellant contends that the notice was not received prior to 28 March 2021 and was not added to the Council's planning register in a timely manner, I am satisfied on the balance of probabilities that the Council notified the appellant within the prescribed period. Consequently, prior approval is not deemed to be granted and the situation in this appeal is different to that in the decisions to which the appellant draws my attention (APP/Q3305/W/15/3129921 and APP/Z3825/W/21/3271103).

5. Under Article 3(1) and Class Q.1(a) and (b), Part 3, Schedule 2 of the GPDO, planning permission is granted for the 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) together with any building operations reasonably necessary to convert the building to a use falling within Class C3, subject to limitations and conditions.
6. Paragraph Q.1 sets out the limitations for Class Q. The Council accepts that the proposal meets all the limitations with the exception of paragraph Q.1(a). This sets out that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 or, 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. Paragraph X of Part 3 defines an 'agricultural building' as a building used for agriculture and which is so used for the purposes of a trade or business. An 'established agricultural unit' is defined in Paragraph X as agricultural land occupied as a unit for the purposes of agriculture.
7. Paragraph Q.2(1) sets out that development is permitted under Class Q(a) and Q(b) subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to a number of considerations. These include (b) noise impacts of the development and (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a Class C3 use.
8. Where an application is made as to whether prior approval is required for development under Class Q, paragraph W(3) of Part 3 of the GPDO provides that the local planning authority may refuse the application where it considers that the proposed development does not comply, or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies, with the conditions, limitations or restrictions that are applicable to such permitted development.
9. In September 2021 Natural England (NE) published a Position Statement for Applications within the Sussex North Water Supply Zone, within which the appeal site is located. The Statement sets out an interim approach to such applications to ensure that proposed developments within the Supply Zone do not add to the impact of water abstraction on the integrity of the Arun Valley Special Protection Area, Special Area of Conservation and Ramsar Site. The main parties were given the opportunity to comment on the implications of this Statement for this appeal and I return to this matter below.

Main Issues

10. The main issues are:

- i) whether the proposed development would be granted planning permission by Article 3 and Schedule 2, Part 3, Class Q of the GPDO with regard to whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013; and
- ii) whether the location and siting of the building would be undesirable, with particular regard to noise.

Reasons

Agricultural use

11. The appeal building comprises a rectangular building with blue profiled metal sheeting to its external elevations forming part of a site with other structures associated with a former nursery use to the north and west. To the east of the building is agricultural land whilst to the south is a wood yard and sawmill. The Council refers to previous applications on the site in 2002 for a change of use from aquatic nursery and timber yard to aquatic nursery, forestry and landscape contractor's timber yard (WC/43/02) and for an extension to the building (WC/175/02). Documents submitted with the latter application indicate that the building was being used as a workshop in conjunction with the appellant's Tree Surgery and Landscape Business.
12. The Council also suggests that there are a number of non-agricultural businesses with the address of the appeal site. Consequently, the Council has doubts that the appeal building was used solely for agricultural use as part of an established agricultural unit on 20 March 2013.
13. However, the appellant indicates that the building ceased to be used as a workshop for in excess of 2 years between the mid-2000s and 2013 and that it reverted to an agricultural use. Moreover, the appellant has submitted a detailed sworn statement confirming that the appeal building has remained solely in agricultural use as part of an established agricultural holding since prior to March 2013. The holding comprises land at New Barn Nursery together with additional farmland elsewhere, including land at Five Oaks that has a hay and silage crop taken off annually.
14. The large field to the east of the barn has also had a hay and silage crop taken off it annually for in excess of 10 years and since prior to 2013. Part of the hay and silage is stored in the appeal building together with associated tractors, trailers and hay making plant and machinery. This accords with my observations during my site visit. The statement also confirms that there has been no intervening other use of the building since the relevant date and that only the site to the south of the building is used separately for the appellant's other business, Paul a'Barrow Tree Services.
15. Therefore, even if around 2002 the building was not solely in agricultural use, I have no firm evidence to contradict the appellant's sworn statement. The Council has provided limited evidence overall to justify its doubts that the building was not solely in agricultural use as part of an established agricultural unit in March 2013.
16. I therefore conclude that, on the balance of probabilities, the building was solely in agricultural use on 20 March 2013 and that there has been no intervening alternative use. On this basis and in this respect the permitted development rights in Class Q of the GPDO apply to the appeal building.

Location and siting of the building

17. As a modest residential development the proposed scheme would itself be unlikely to generate significant noise impacts such as to cause disturbance to neighbouring properties. However, to the south of and in proximity to the appeal building is a wood yard and sawmill, known as 'Timberlands'. The Council also notes that a separate building contractor has a named business

address at 'Timberlands'. The commercial activities at 'Timberlands' therefore have the potential to cause significant noise and disturbance to future occupiers of the proposed dwellings.

18. The appellant operates the sawmill and is agreeable to a condition requiring the cessation of the sawmilling business and demolition of the buildings that house noise-generating activities. However, the Council refers to Land Registry information from another party that 'Timberlands' is not within the ownership of the appellant. This is not disputed by the appellant and in an email to the Planning Officer dated 23 March 2021 the appellant accepts the Council's second reason for refusal relating to noise. The appellant therefore has no control over the operation of any future businesses on the site, including a potential continuation or resumption of sawmilling by another party, with the ongoing potential for noise and disturbance.
19. In this respect the appeal before me differs from the appeal decision to which the appellant draws my attention (APP/Q3305/W/14/3000602). In that appeal the Inspector imposed a condition requiring the decommissioning and demolition of buildings and a silage clamp before the change of use from agricultural to a single dwellinghouse took place. However, in that case the buildings and clamp were in the ownership of the appellant.
20. Although noise insulation could be required by a condition, in the absence of any noise assessment or details of noise insulation I have no evidence that any noise could be adequately mitigated. Consequently, I cannot be satisfied that the living conditions of the future occupiers of the proposed dwellings would not be adversely affected by activities at 'Timberlands'. Insofar as it is relevant to the proposed development and this prior approval matter, paragraph 174 e) of the National Planning Policy Framework sets out that planning decisions should prevent new development being put at unacceptable risk from, amongst other things, unacceptable levels of noise pollution.
21. I therefore conclude that the proposed development would be acceptable with regard to Q.2(1)(b) but that with regard to Q.2(1)(e) the location and siting of the building makes it undesirable for it to change from an agricultural use to use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

Other Matters

22. The proposed development would result in an additional 5 dwellings to the housing supply of the district. However, the consequent benefits have already effectively been recognised by the grant of permission under Article 3(1) of the GPDO. Housing land supply is therefore not a relevant consideration and has not been given any weight in my determination.
23. As I am dismissing this appeal for other reasons, there is no need for me to consider the potential effect of the proposed development on the integrity of the Arun Valley designated habitats sites.

Conclusion

24. For the reasons given above, I conclude that the appeal should be dismissed.

Martin Small INSPECTOR