



Appeal Decision

Site visit made on 18 August 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2022

Appeal Ref: APP/J3720/W/21/3271706

Cross Leys Farm, Cross Leys, Ilmington CV36 4RT

- 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 Mrs T Rondel against the decision of Stratford on Avon District Council.
 - The application Ref 20/03728/COUQ, dated 23 December 2020, was refused by notice dated 17 February 2021.
 - The development proposed is prior approval application for the change of use of an agricultural building (Barn 3) into a larger residential dwelling (C3) and associated operational development under Class Q parts (a) and (b) of the General Permitted Development Order (GPDO).
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO) sets out that development is classed as permitted development if it consists of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. This is subject to a number of situations where such development is not permitted, listed under paragraph Q.1, and, subject to compliance with conditions, as set out under paragraph Q.2. The Council has not raised any issues in respect of paragraph Q.2 and I have no reasons to disagree.
4. In this case, the Council has raised an issue in relation to the exclusion in paragraph Q.1(a) of the GPDO. Paragraph Q.1 of the GPDO states that development is not permitted by Class Q if— (a) the site was not used solely for an agricultural use as part of an established agricultural unit— (i) on 20th 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 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.

5. Based on the appellant's application form and Planning Statement, for the purposes of this appeal the relevant date is 20 March 2013.
6. The Councils second reason for refusal relates to the extent of the proposed demolition works. Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than: (i) the 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).
7. Against that background the main issues are:
 - i) Whether the proposal would be permitted development under the provisions of Class Q.1 (a) of the GPDO, with particular 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) If the proposal would be permitted development under the provisions of Class Q.1 (a) of the GPDO, whether the proposed works amount to partial demolition to the extent reasonably necessary to carry out any building operations allowed by paragraph Q.1(i)(i) of Schedule 2, Part 3, Class Q of the GPDO.

Reason

Whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.

8. The appeal property is referred to as Barn 3, which is described as a modern steel portal framed cattle shed. It is for the appellant to demonstrate that on the relevant date (20 March 2013), the site was used solely for an agricultural use as part of an established agricultural unit, in compliance with Paragraph Q.1(a).
9. 'Agriculture' is defined in Section 336, of the Town and Country Planning Act 1990 (as amended) and includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purpose.
10. Schedule 2, Part 3, paragraph X of the GPDO further sets out that for the purposes of Part 3 permitted development rights, 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, and 'agricultural use' refers to such uses. 'Site' is defined as 'the building and any land within its curtilage' and 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.
11. In determining two other prior approval applications relating to agricultural buildings at Cross Leys Farm, the Council has accepted that an 'established agricultural unit' existed at Cross Leys Farm on the relevant date. Therefore,

the matter in dispute is whether or not on the relevant date (20 March 2013), the site (Barn 3 and any land within its curtilage) was used solely for an agricultural use.

12. In respect of the proposal before me, the Council assert that the site has historically been used for equestrian purposes. This is based on a recent site visit when Barn 3 was being used for equestrian purposes. However, this in itself is of limited significance to the relevant period. The Council also refer to aerial imagery from 2013 and suggest that this shows horses on land to the north and south of the buildings and a muck heap nearby. Along with a paddock arrangement on land to the south. However, this evidence is not before me nor are the full details relating to application 19/0388/LDE.
13. I have also carefully considered the appellant's evidence provided during the application and at appeal, and other than advising that Barn 3 is used for livestock, I have not been supplied with sufficient evidence to support the position that there was an agricultural use on the site at the relevant time.
14. The appellant also advises that only the lean-to element of Barn 3 has been used on a part time basis to house horses during the winter months for personal use and that the lean-to is proposed to be demolished as part of the proposal. Even so, the lean-to forms part of the site. Therefore, even if the keeping of horses at the site did not result in a material change of use, it still adds uncertainty over the use of the site.
15. For the foregoing reasons, I conclude that the appellant's evidence fails to clearly show that on the 20 March 2013 the site was used solely for an agricultural use as part of an established agricultural unit. The proposal therefore does not comply with criteria under Q.1(a) of Class Q of the GPDO and is therefore not permitted development.

Whether the proposed demolition is considered reasonably necessary

16. As the proposal is not permitted development, it is not necessary for me to consider whether the proposed demolition works are reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i) of Schedule 2, Part 3, Class Q of the GPDO.

Conclusion

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

M Aqbal
INSPECTOR