



Appeal Decision

Site visit made on 13 October 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th March 2022

Appeal Ref: APP/J3720/W/21/3276441

The Barn, Spiers Farm, Chesterton Road, Harbury CV33 9NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Shepherd against the decision of Stratford on Avon District Council.
 - The application Ref 20/03361/COUQ, dated 16 November 2020, was refused by notice dated 18 January 2021.
 - The development proposed is change of use agricultural building to 1 no. dwelling and associated operational development under parts Class Q(a) and Class Q(b).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the GPDO') for change of use of agricultural building to 1 no. dwelling and associated operational development under parts Class Q(a) and Class Q(b) at The Barn, Spiers Farm, Chesterton Road CV33 9NJ in accordance with application Ref 20/03361/COUQ, dated 16 November 2020. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2 (3) of the GPDO and subject to the following additional conditions in the Schedule of Conditions to this decision.

Preliminary Matter

2. The appellant has provided a signed and dated letter from Mr Gibbs, the present agricultural tenant of land and barns at Spiers Farm. This confirms that he consents to the proposal. This, therefore, meets the requirement under Schedule 2, Part 3, Class Q.1 (e) of the GPDO.

Background and Main Issues

3. The appeal building is a brick-built barn amongst a small collection of buildings at Spiers Farm. This barn is located furthest away from the highway with fields to the north of it.
4. Schedule 2, Part 3, Class Q of the 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.

5. 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.
6. 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.
7. Based on the appellant's application form and Planning Statement, for the purposes of this appeal the relevant date is 20 March 2013.
8. The Council's second reason for refusal relates to the extent of the proposed building operations, in particular the creation of a 'balcony' feature. 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).
9. Against that background the main issues are:
 - i) 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 extent of the proposed building operations, in particular the creation of a 'balcony' feature is allowed by paragraph Q.1(i) of Schedule 2, Part 3, Class Q of the GPDO.

Reasons

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

10. 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)(i). As such, there is no requirement for the site to be in agricultural use immediately before the change of use is undertaken.
11. '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.

12. 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.
13. In support of his case the appellant has referred to Rural Agency payments made under the Government's Single Payment scheme, including for the year 2013. Whilst these do not specifically refer to Spiers Farm, I have been provided a copy of the 2013 application, which identifies a large field associated with Spiers Farm, to the north of the appeal building.
14. A letter from Mr W J Foden confirms that he leased land and associated buildings at Spiers Farm from 2004 until 2014. Adding, that the land was used for the production of arable crops, mainly cereals, and included the agricultural use of the barn which is the subject of the application. This is also corroborated by a copy of a signed Farm Business Tenancy Agreement, dated 25 September 2009 which also covers the relevant date. This agreement is between Mr W J Foden and the appellant and includes a plan showing the appeal building and the large field associated with Spiers Farm.
15. Furthermore, the letter from the owner of Fidlers Field Service, states that he was responsible for advising on the land at Spiers Farm from 2005 – 2015, this included providing technical advice on the growing crops and claiming government subsidies. He also advises that his company made deliveries of seed, fertiliser and chemicals to the barn nearest the field at Spiers Farm, and that the key to access this was provided by Mr Foden. He confirms that the appeal building was in agriculture use at the time of his visits and was used for keeping farm machinery, and where they left deliveries and believes that the barn was solely in agricultural use on the 20 March 2013.
16. A neighbour who has resided near to Spiers Farm since 1980, has also confirmed that the building subject of this appeal has been continually used for agricultural purposes since then. In particular, that since late 2004, it has been used by local farmers for tractor, implement, crop, seed and fertiliser storage, in conjunction with and to facilitate arable farming of the adjoining fields up to the present day.
17. Taken together, on the basis of the above evidence, it would appear that Spiers Farm was an established agricultural unit on the relevant date. This evidence also supports the appellant's assertion that the site was used solely for an agricultural use on the relevant date.
18. However, I have also been referred to the site's planning history. This includes planning permission 96/01259/FUL which was for 'Continuation of use of former agricultural barns as warehousing (Class B8)'. This was a personal planning permission and Condition 1 states, 'This permission hereby granted shall ensure for the benefit of G C Fellowes only and on the discontinuance of his occupancy of the site the use hereby permitted shall cease.'
19. The appellant asserts that after he purchased Spiers Farm in 2004, Mr Fellowes no longer occupied the site for the purposes of the personal planning permission. If this was the case, then I acknowledge that the lawful use of the

relevant buildings would have reverted to agricultural by virtue of Section 57(2) of the Town and Country Planning Act.

20. On the other hand, the Council has provided copies of correspondence from an architect acting on behalf of the owner of Spiers Farm to the Council's enforcement officer, relating to an alleged change of use at Spiers Farm. The letter dated 12 June 2013 includes a block plan and refers to the proposed change of use of the appeal building from B8 (storage) use to B1 (business) use under the provisions of permitted development.
21. A second letter dated 10 September 2013, advises that Mr Fellows (previous owner of the site) continues to store antiques and associated equipment in the building, under the terms of planning permission granted in 1996. However, no specific building is identified in that letter. A final letter dated 21 January 2014, confirms that at that time the appeal building was occupied for B1 use.
22. From the wording of the second and final letter there is an inference that the buildings at Spiers Farm were not in agricultural use prior to the conversion to B1. However, because I have only been provided with some of the correspondence referred to in the above letters, this evidence is inconclusive. In any event, the correspondence before me relates to periods after 20 March 2013.
23. Planning application (15/01189/FUL) dated 27 March 2015 was for the proposed construction of a dwelling at Spiers Farm. That application was dismissed on appeal (APP/J3720/W/15/3134539). The 'Design, Access and Justification Statements' for that application, identifies the building subject of this appeal as being used to house a collection of 3 large traction engines, 4 trailers and several classic cars in connection with the owner's hobby. The abovementioned appeal decision refers to the collection of buildings at Spiers farm as 'former agricultural buildings' and paragraphs 5-7 indicate that the use of the site at the time of the appeal was for the repair and refurbishment of steam engines along with their storage. Nevertheless, that application and appeal also relate to periods after the relevant date and therefore are of limited significance.
24. Consequently, in light of the appellant's evidence, on balance, I am satisfied that the site was solely used for an agricultural use as part of an established agricultural unit on 20 March 2013. The proposal therefore accords with the provisions, limitations and conditions of Schedule 2, Part 3, Class Q.1 (a) of the GPDO.

Balcony feature

25. The proposal includes the part demolition of the first-floor wall of the north-west elevation of the building in order to create a 'balcony' feature. This comprises the installation of glazed doors and windows recessed from the north-west elevation of the building to create a modest space, part enclosed by balustrades. The area for the 'balcony' feature would therefore be largely enclosed by the original building and located within its footprint. The balustrades would also form part of the building's external walling.
26. As such, the 'balcony' feature constitutes works to install, windows, doors and exterior walls which are permitted. Partial demolition, to the extent reasonably necessary to facilitate these works, is also allowed.

27. For the above reasons, the extent of the 'balcony' feature is allowed by paragraph Q.1(i), Schedule 2, Part 3, Class Q of the GPDO.

Conditions

28. Section W (13) of Part 3 of Schedule 2 of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
29. I have specified the approved drawings as this provides certainty. A condition relating to the details of external materials is necessary to ensure the satisfactory appearance of the development. Conditions in respect of the investigation and remediation of any ground contamination are necessary in the interest of the health and safety of residents. It is also reasonable to require electric vehicle charging points to be provided within the development to promote sustainable forms of development.
30. The Council has suggested a condition limiting the use of the other buildings at Spiers Farm. However, on the information before me it has not been clearly shown how the use of these would harm the living conditions of occupiers of the dwelling hereby approved. Therefore, such a condition is not necessary or reasonable.
31. Condition 2 which prevents any development approved from commencing until it has been complied with is considered fundamental to the development hereby approved. It is necessary for this to take the form of a 'pre-commencement' condition to have its intended effect. Where necessary and in the interests of clarity and precision, I have altered the Councils suggested conditions to better reflect the relevant guidance.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

M Aqbal
INSPECTOR

Schedule of Conditions

1. The development hereby approved shall be carried out in accordance with the following drawings: 20.0808.GA.001 – Location & Block Plan; 20.0808.GA.003 – Existing Site Plan; 20.0808.GA.010 – Existing Plans & Elevations; 20.0808.GA.101 – Proposed Site Plan; 20.0808.GA.102a – Proposed Floor Layouts and 20.0808.GA.103a – Proposed Elevations.
2. The development hereby permitted shall not commence until clauses (a), (b) and (c) have been complied with: (a) A Phase 1 Desk Study and site walkover has been carried out. The Desk Study shall provide results of the site walkover; detail a full history of the site uses; and identify any unacceptable risks to human health and the environment. The Desk Study shall be submitted to and approved in writing by the Local Planning Authority. (b) Where unacceptable risk is identified by the Desk Study, a detailed Site Investigation shall be carried out and a Site Investigation Report submitted to and approved in writing by the local planning authority. The Report shall detail all investigative works and sampling on site, together with results of analysis and risk assessment to any receptors. (c) Where unacceptable risk is identified by the Site Investigation Report, a proposed Remediation Strategy (including a Quality Assurance Scheme) shall be submitted to and approved in writing by the local planning authority. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.
3. Prior to occupation of the development hereby permitted, clauses (a), (b) and (c) shall be complied with: (a) All remediation work approved under the Remediation Strategy in Condition 2 above shall be completed as approved and be carried out under the Quality Assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works, contamination is encountered which has not previously been identified, the additional contamination shall be fully assessed, and an appropriate remediation scheme and timescales shall be submitted to and approved in writing by the local planning authority. (b) A Completion Report shall be submitted to and approved in writing by the local planning authority. The Completion Report shall include details of the remediation works and Quality Assurance certificates to verify that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included together with the necessary waste transfer documentation detailing the waste materials that have been removed from the site. (c) A certificate signed by the developer shall be submitted to the local planning authority confirming that the appropriate works have been undertaken as detailed in the Completion Report.
4. Prior to their installation, details of the external facing and roofing materials to be used in the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved materials.

5. The dwelling hereby permitted shall not be occupied until electric vehicle charging points (EVCPs) have been provided for at least one dedicated parking space with an EVCP rated at a minimum of 16 amps. The provision shall be in accordance with details previously submitted to and approved in writing by the local planning authority. Such details shall include siting, numbers, design, rating and appearance of the EVCPs.