
Appeal Decision

Hearing Held on 5 April 2022

Site visit made on 8 April 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Appeal Ref: APP/G5180/W/21/3273659

Land South of the Manor, New Barn Lane, Cudham, Westerham TN16 2HT

- 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 Mr B Singhal (Divami Ltd.) against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/00124/FLXAG, dated 25 January 2021, was refused by notice dated 19 March 2021.
 - The development proposed is described on the application form as 'Development proposed is under class Q PD rights to change the use of current agricultural building into a dwelling house and associated building works. Please see attached drawings and photographs for more details. The site is on New Barn Lane which has many detached dwellings nearby and is within 10 minutes of cycling distance of High Road of Biggin Hill high street. All habitable rooms are designed to have adequate natural light which will be further augmented by the retention of existing rooflights / skylights (there will be no loft space)'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Prior to the hearing an application for costs was made in writing by Mr B Singhal (Divami Ltd) against the Council of the London Borough of Bromley. An oral response from the Council to this application was made at the hearing. An application for costs was also made in writing by the Council of the London Borough of Bromley against Mr B Singhal (Divami Ltd) after the hearing. A written response from the appellant to this application was also submitted after the hearing. These applications are the subject of separate Decisions.

Preliminary and Procedural Matters

3. Schedule 2, Part 3, Paragraph W of the GPDO sets out the prior approval process. It states¹ that the local planning authority may refuse an application where, in its opinion, 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. It was on this basis that the Council refused to grant prior approval.

¹ Paragraph W.(3)

4. The appellant has raised concerns regarding the Council's handling of the case, and in particular with regard to a perceived lack of objectivity. However, in determining the appeal I have only had regard to the planning merits of the case.
5. The Council have described the development as 'Change of use of existing agricultural building to Class C3 Dwellinghouse and associated building works (56 day application for prior approval in respect of transport and highways, noise, contamination, flooding risks, location, siting and external appearance under Class Q of Part 3 of schedule 2 of the GPDO)'. I note that the appellant has also utilised this description on their appeal form. I consider that this revision provides a succinct and accurate description of the proposal and I have therefore determined the appeal on this basis.

Main Issues

6. The main issues are:
 - Whether the proposed development constitutes permitted development, having regard to whether the requirements of Schedule 2, Part 3, Class Q paragraph Q.1(a) of the GPDO would be met; and
 - if so, whether prior approval would be required in accordance with the relevant conditions set out in Paragraph Q.2 (1) of the GPDO.

Reasons

Whether permitted development

7. Class Q permits development consisting of (a) a 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) or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use.
8. Paragraph Q.1(a) of the GPDO requires that the site must have been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 (the relevant date) or, if the building was in use before that date but was not in use on that date, when it was last in use. Paragraph X of the GPDO defines an 'agricultural building' as one used for agriculture, and which is so used for the purposes of a trade or business. An 'agricultural use' refers to such uses. An 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture. Whether or not this is the case is a matter of fact and degree based on the merits of the case and the evidence presented.
9. In support of his contention that the site including the barn was used solely for agriculture as part of an established agricultural unit for the purposes of a trade or business on the relevant date, the appellant places considerable reliance on the statutory declaration made by Mr John Hodson on 27 November 2020 which states that in a contractual arrangement with the then owner, Mr Wright, that he used all the fields at New Barn for making hay, and its barn for storing hay in connection with his agricultural business every year for many years until 2014. He also states that he sold this hay thereby generating income for his business. However, no such contractual agreement has been submitted to support this.
10. Mr Hodson's previous statutory declaration dated 11 May 2015 submitted by the Council also states that he farmed the land for several years before it was sold in 2014, and that this was done to produce and cut hay as his agricultural business activity and not to maintain the land as he generated income out of it.

11. The statement made by Mr Colin Goodearl dated 22 November 2020 also says that Mr Hodson and his family run an agricultural business and that he made hay at New Barn during 2012 and 2013 and possibly during other years.
12. However, there is no substantive evidence before me in relation to accounts or tax returns to indicate that the activity at the site, including the barn, at that time including, the relevant date, had been carried out for the purpose of a trade or business. It is also not enough to simply say that the reason for this is that it was *'unreasonable for the LPA to expect from a reluctant third party like Mr Hodson to give out details of his income to us or the LPA in a planning matter in which he has no interest or stake'*.
13. To support Mr Hodson's declarations, the appellant has also submitted a Facebook Page showing the profile of Hodson Hay including pictures of agricultural activity, haymaking, and details of customers. However, according to this evidence the page was accessed on 24 October 2020 and created on 31 October 2016. There is also nothing on this page that definitively shows which fields these pictures were taken in. Consequently, I afford this evidence little weight.
14. The statutory declaration made by the previous owner, Mr Wright, dated 12 August 2014 as submitted by the Council states that the barn on this land was used for storing tractors and hay. His subsequent letters to the Council also state that up to four classic tractors were stored in the enclosed part of the barn that he tried out 'from time to time'. He also states in one of these letters that it was his intention to use these tractors for experimental small farming (to provide content for a smallholding magazine).
15. In his statutory declaration dated 23 January 2021, the appellant also states that the secured part of the barn could not have been used for the storage of classic tractors as when he visited the site in the first week of March 2013 this part of the barn was empty because the large roller-shutter door was unable to be opened as the chain that opens this door was 'off' the pulley system. In this declaration the appellant also states that the chain is still off its pulley at present and I did observe that this was the case on my site visit. The appellant also argues that the reason this chain was never put back on the pulley was because this could not be done without bringing a ladder and climbing on it. However, as stated by the appellant at the hearing, the side door was accessible on the relevant date and indeed before and after that date. Consequently, it would be reasonable to think that a step ladder or similar ladder could have been brought in via this side door so that the chain could be put back on the pulley to allow this door to be opened.
16. This statement by the appellant is also at odds with what was in his previous statutory declaration dated 5 February 2018 as submitted by the Council, where he states that when he visited the site in 2014, tractors were stored in the secured area of the barn. At the hearing I asked the appellant what the reason was for this discrepancy with the answer being that he may have misheard Mr Wright at the time as he is deaf in one ear. Moreover, if the larger side door to the barn was unable to be opened it would have been difficult for it to be fully available for use by Mr Hodson as stated in his statutory declaration dated 27 November 2020.
17. In the same statutory declaration Mr Hodson also states that Mr Wright did not store or keep any tractor in the barn at least from the summer of 2012 and onwards. However, this is at odds with the statutory declaration of Mr Wright who as above, stated that the barn was used for storing tractors as well as hay in 2014.
18. The appellant has also submitted evidence they say shows that the large door/entrance to the secured part of the barn would not provide that anticipated

height clearance for the proposed tractor storage i.e., the email from Reading Agricultural Consultants to the ESD planning group dated 14 July 2008.

19. However, this email appears to refer to a previous response on a similar application by the agricultural consultant who goes on to say *'In response to my initial conclusion that the barn was of insufficient height to be used for tractor storage, Mr Wright advised that the 3 metre eaves height provides sufficient clearance for his Massey Ferguson 165 Tractor. Whilst I am still of the opinion that the standard height of an agricultural building would be 4m, which would be a more workable height, I accept that this specific machinery can be incorporated within a 3m eaves height'*.
20. Consequently, based on this and the other evidence before me, the tractors stored in the barn by Mr Wright were likely to have been classic tractors which judging by the photographs and other evidence submitted by the appellant would likely be smaller than a standard type of tractor and therefore would have in all likelihood been able to fit through the door as noted by the agricultural consultant.
21. In his statutory declaration of 2018, the appellant also states that Mr Wright told him that the tractors he had stored in the barn were removed except for one by the end of 2012 meaning that no tractors were stored in the barn on the relevant date particularly as the one that was left was unable to be used as it had no seat or steering wheel. Mr Goodearl's statement also says that he saw a vintage tractor on the open land that was old and unable to move when he visited the appeal site during the summer of 2012. However, while the evidence does show that this classic tractor was stored outside and that the other more usable one was moved elsewhere, it does not demonstrate that this tractor was taken away from the site and not just stored in the secure area of the barn which could reasonably have been accessed.
22. Likewise, if as the appellant argues, no tractors were stored at the barn on the relevant date, and that the one that was outside the barn was unusable, then this to my mind would make it less likely that there was any other agricultural activity occurring at the appeal site or in the barn at that time other than that undertaken by Mr Hodson.
23. The appellant and an interested party have also argued that as there were no tracks in front of the entrance to the secured part of the barn, as evidenced by the appellant's submitted photos, that this means that no tractors were stored there. However, while this would likely be the case for a larger standard type of tractor it would not necessarily be the case for a smaller classic or other tractor such as the Massey Ferguson 165, particularly if it was not used all of the time, as it would be less likely to leave marks on the track due to its lesser size, weight and usage.
24. Furthermore, if as the appellant argues, the secured part of the barn was not used for storing anything, it would not likely have been possible for Mr Hodson to be able to store hay, agricultural machinery and cattle as stated in his statutory declaration dated 11 May 2015 particularly if the open and larger section of the barn was often 'completely full of hay' as stated in his declaration dated 27 November 2020 and as shown by the associated photographs.
25. The statutory declaration made by the previous owner, Mr Wright, dated 12 August 2014 also states that the land was in agricultural use (including hay production and the keeping of livestock) for agricultural trade before and after the erection of the barn during the period of his ownership. In his statutory declaration of 27 November 2020, Mr Hodson states that around 100-200 sheep belonging to Hilders Farm grazed at New Barn every winter until 2014 and this would appear to accord

with Mr Wrights declaration. However, even so, this was a time-limited agricultural activity and other than a press article no financial accounts or other substantive evidence has been submitted to demonstrate how this sheep grazing contributed to the use of the appeal site, including the barn, as part of an established agricultural unit for the purposes of a trade or business at that time.

26. As a result, based on the evidence, I consider it likely that the secured part of the barn was used to store up to four classic tractors on the relevant date, irrespective of the fact that one unusable tractor was left outside the barn at that time. Based on the evidence I also consider that these tractors were not used all of the time and that any sheep grazing on the site on the relevant date was also likely to have been for a fixed time period and therefore not have been the primary use of the land at that time. Consequently, I consider that this activity was not undertaken as part of an established agricultural unit.
27. Furthermore, as highlighted by the Inspector in the previous planning appeal decision Ref. APP/G5180/X/17/3188807 the keeping of classic tractors, even though they may have been used from time to time, was not agricultural activity. From the evidence before me I see no reason to disagree with this conclusion. This is a consideration to which I afford significant weight.
28. Under paragraph W of the GPDO, the local planning authority may refuse an application where the developer has provided insufficient information to establish whether the development complies with any conditions, limitations, or restrictions in Part 3. The burden of proof is on the applicant and in this case, on the basis of the evidence before me, I find there is uncertainty as to whether the site including the barn was used solely for agricultural use as part of an established agricultural unit for the purposes of a trade or business.
29. Taking all of this into account, in my judgment the evidence provided is not sufficiently precise and unambiguous to establish, on the balance of probabilities, that the site including the barn was used solely for the purposes of an agricultural trade or business on 20 March 2013, as required by the terms of Class Q of the GPDO.
30. For the above reasons, I therefore conclude that, as a matter of fact and degree and based on the evidence before me, the proposal would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO, and therefore is not development permitted by it.

Prior approval

31. Given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether prior approval would be required, as it would not alter the outcome of the appeal.

Other Matters

32. In support of the appeal proposal the appellant has cited similar proposals that were granted planning permission Ref. APP/F2605/W/15/3002896 (Cherry Tree Farm) and APP/G5180/W/16/3144487 (Fortune Bank Farm). However, I do not have all the details of these cases before me or the circumstances which led to those decisions being taken.
33. In addition, for the Cherry Tree Farm scheme, according to the copy of the decision letter submitted by the appellant, the Council's concern related to contaminated land and this concern appears to have been subsequently addressed as part of the appeal. There was also no other evidence submitted to conflict the applicant's

evidence that the site was used solely for agriculture as part of an established agricultural unit on 20 March 2013.

34. As for the Fortune Bank Scheme, the copy of the decision letter submitted by the appellant shows that the local planning authority had not provided any substantive evidence to dispute the appellant's claim that the barn had been solely in agricultural use as part of an established agricultural unit for the purposes of a trade or business. Consequently, I consider that the circumstances applicable to these schemes are not the same as those presented in this case, which I have determined on its own merits.
35. I also note the judgment cited by the appellant² in that their evidence '*does not need to be corroborated by independent evidence in order for it to be accepted and that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability*'. However, in this case for the reasons set out above, I have found that the appellant's evidence is not sufficiently precise and unambiguous. As a result, I afford this matter little weight.
36. The appeal site is located within the Metropolitan Green Belt. However, given the main issues relevant to this case I have not considered this matter further.

Conclusion

37. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
38. The appeal is, therefore, dismissed.

C Coyne

INSPECTOR

² F W Gabbittas v SSE and Newham LBC [1985] JPL 630

APPEARANCES

FOR THE APPELLANT:

Bhupendra Singhal – Divami Ltd

Gupta Aakash

Amisha Singhal

Devashi Singhal

FOR THE LOCAL PLANNING AUTHORITY:

David Bord BA (Hons), PGDip, MRTPI – Principal Planner, London Borough of Bromley

INTERESTED PARTIES

Alan Howell