



Appeal Decisions

Site visit made on 10 May 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal A - Ref: APP/G1630/W/21/3280037

Smallholding Plot 6, 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 (as amended).
 - The appeal is made by Mr Michael Keeley against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00358/PDAD, dated 13 March 2021, was refused by notice dated 20 May 2021.
 - The development proposed is a Prior Approval under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), conversion of an agricultural building to one smaller residential dwelling falling within use class C3, together with associated works reasonably necessary for the conversion (a net increase of one smaller dwellinghouse)
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Appeal B - Ref: APP/G1630/W/21/3287266

Smallholding Plot 20, 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 (as amended).
 - The appeal is made by Mr Michael Keeley against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00355/PDAD, dated 14 March 2021, was refused by notice dated 20 May 2021.
 - The development proposed is a Prior Approval under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), conversion of an agricultural building to one smaller residential dwelling falling within use class C3, together with associated works reasonably necessary for the conversion (a net increase of one smaller dwellinghouse)
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Appeal C - Ref: APP/G1630/W/21/3287267

Smallholding Plot 21, 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 (as amended).
- The appeal is made by Mr Michael Keeley against the decision of Tewkesbury Borough Council.
- The application Ref 21/00353/PDAD, dated 15 March 2021, was refused by notice dated 20 May 2021.
- The development proposed is a Prior Approval under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), conversion of an agricultural building to one smaller residential dwelling falling within use class C3,

together with associated works reasonably necessary for the conversion (a net increase of one smaller dwellinghouse)

Appeal D - Ref: APP/G1630/W/21/3287268

Smallholding Plot 23, 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 (as amended).
 - The appeal is made by Mr Michael Keeley against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00364/PDAD, dated 15 March 2021, was refused by notice dated 20 May 2021.
 - The development proposed is a Prior Approval under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), conversion of an agricultural building to one smaller residential dwelling falling within use class C3, together with associated works reasonably necessary for the conversion (a net increase of one smaller dwellinghouse)
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Appeal E - Ref: APP/G1630/W/21/3287272

Smallholding Plot 24, 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 (as amended).
 - The appeal is made by Mr Michael Keeley against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00374/PDAD, dated 18 March 2021, was refused by notice dated 20 May 2021.
 - The development proposed is a Prior Approval under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), conversion of an agricultural building to one smaller residential dwelling falling within use class C3, together with associated works reasonably necessary for the conversion (a net increase of one smaller dwellinghouse)
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Appeal F - Ref: APP/G1630/W/21/3287274

Smallholding Plot 25, 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 (as amended).
 - The appeal is made by Mr Michael Keeley against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00376/PDAD, dated 19 March 2021, was refused by notice dated 20 May 2021.
 - The development proposed is a Prior Approval under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), conversion of an agricultural building to one smaller residential dwelling falling within use class C3, together with associated works reasonably necessary for the conversion (a net increase of one smaller dwellinghouse)
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Decisions

1. Appeal A is dismissed.
 2. Appeal B is dismissed.
 3. Appeal C is dismissed.
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4. Appeal D is dismissed.
5. Appeal E is dismissed.
6. Appeal F is dismissed.

Preliminary Matters

7. As I set out above, there are six separate appeals relating to different, but closely associated, plots of land within the wider site. I have considered each of the proposals on their individual merits. However, the circumstances of each appeal, as well as the submitted evidence, are similar. I have therefore dealt with all cases in one document, in order to avoid repetition.

Background and Main Issues

8. Schedule 2, Part 3, Paragraph W(3) 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. All of the decisions made by the Council rely, in part, on this basis.
9. Part Q of the GPDO states, at paragraph Q.1(a), that development under this class is not permitted if the site was not solely used for an agricultural use as part of an established agricultural unit on 20 March 2013 (the relevant date). 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.
10. The first main issue in relation to each appeal is therefore whether each plot was used for agriculture for the purposes of a trade or business at the relevant date.

Reasons

11. The plots of land are located within Warren Fruit Farm, a larger site which is under the ownership of the appellant. Each plot is contended to comprise an individual small holding. The information submitted outlines that in 2008 the larger area of land was split into 33 small plots that were let out under licence. Each potential licensee was vetted and, if considered suitable, a licence issued. A cooperative was established to support the plot holders in respect of machinery, transportation, labour, marketing and suppliers. Part of membership of the cooperative allowed the plot holders to sell produce grown on the plots, which was collected and sold at a local public house owned by the appellant. There were also further sales of produce via farm gate sales.
12. The submitted evidence outlines that the licensees for each of the plots in 2013 were a member of the cooperative and allowed the cooperative to sell produce. While there is no direct evidence from the licensees who occupied the individual plots, a neighbouring plot occupier attests in a statutory declaration that they were operating as an agricultural business during 2013. This however is not endorsed through any supporting evidence.

13. The cases are supported by bank statements in respect of the account of the cooperative, which indicate that monthly payments were made to the occupiers of the individual plots throughout 2013. Nevertheless, the statements reference only the plot numbers and there is no indication of what the payments were in respect of, i.e., the scale or volume of produce that was produced. Moreover, there are no business accounts provided or direct information from the individual plot holders at the relevant date, in respect of the level or nature of activity and sales at each of the plots. There is no detailed evidence such as invoices for goods, materials or equipment. As such, there is nothing to demonstrate that the growing and selling of produce on each of the plots was any more than a hobby, or that the sale of produce was more than the sale of surplus, from the domestic, hobby or leisure use of the site.
14. The applications were accompanied by a supporting statement from the appellant, outlining how the establishment of the cooperative was achieved, also appended to this are an insurance cover note in respect of tractors, a Rural Payments Agency letter, electricity payment demand letter and fuel invoice. While these documents point to the existence of the cooperative at times, they do not provide evidence in respect of the specific operation of each plot.
15. Moreover, the inclusion of an animal movement record, which details the movement of sheep through various plots at the site also does not establish that a trade or business was taking place. Rather, it is indicative only of the possibility of plot holders using sheep to graze and maintain each of the plots as is commonplace for uncultivated land, particularly as there is no indication of any payment for this. I also note that the sheep were owned by the individual who issued the licences to plot holders, and not by the plot holders themselves.
16. The appellant draws my attention to the report "Small is Successful", a document produced by the Ecological Land Cooperative, which endorses the viability of holdings of less than 10 acres, and supports that small farms can be economically, socially and environmentally successful. While I have no reason to doubt the contents of this document, it provides no evidence in respect of the sites that are the subject of the appeals.
17. There are also several appeal decisions that have been provided in order to support the appellants' case. However, in each of those cases the specific circumstances ultimately led to the decisions that were reached, as is the case in the appeals before me. From what I have read, none of the cases are directly comparable to the circumstances of these appeals and thus they do not dissuade me from my findings above.
18. I therefore find that it has not been sufficiently demonstrated, on the balance of probability, that each of the individual plots were used for agriculture for the purposes of a trade or business, as part of separate established agricultural units on 20 March 2013. As such, each scheme would not accord with Schedule 2, Part 3, Class Q, paragraph Q.1.(a)(i) of the GPDO and would not be permitted development. As a result, it is not necessary that I consider whether the schemes comply with other relevant limitations and conditions as set out in the GPDO.

Other Matters

19. There is reference to the complicated planning history to the site, which has included enforcement investigations by the Council. However, while this is noted, I have considered the appeals on the basis of the relevant evidence that has been submitted for each.

Conclusion

20. For the reasons given above, and having regard to all matters raised, I conclude that all of the appeals should be dismissed.

Martin Allen

INSPECTOR