
Appeal Decision

Site visit made on 17 May 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2022

Appeal Ref: APP/Z3825/W/21/3281515

Malthouse Cottage Farm, Malthouse Lane, Ashington, RH20 3BU

- 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.
 - The appeal is made by Mr and Mrs Steve Ellis against the decision of Horsham District Council.
 - The application Ref DC/21/1342, dated 21 May 2021, was refused by notice dated 12 August 2021.
 - The development proposed is change of use of three agricultural buildings to residential to form 2 no dwellings (C3) and associated garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development given within the appeal form and decision notice as it most accurately describes the proposed development.

Main Issues

3. The Council is concerned that the proposal is not permitted development because the building was not in agricultural use on the specified date.
4. Accordingly, the main issue in this case is:
 - whether or not the proposal would be permitted development under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

Reasons

Agricultural Use

5. Schedule 2, Part 3, Class Q of the GPDO permits development consisting of (a) 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 (dwellinghouse) of the Schedule to the Use Classes Order; and (b) building operations reasonably necessary to convert the building. This is subject to several limitations where such development is not permitted, listed under Paragraph Q.1.

6. Schedule 2, Part 3, paragraph Q.1(a) of the GPDO rules that development carried out under Class Q is not permitted where the site was not used solely for an agricultural use as part of an established agricultural unit on (i) 20 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. Paragraph X of Schedule 2, Part 3 of the GPDO defines agricultural use as a use for the purposes of a trade or business. S336(1) of the Town and Country Planning Act 1990 (the Act) defines agriculture for this purpose.
7. The definition at Paragraph X has to be applied where "site" means the building and any land within its curtilage. This may not always be the same as the red line site shown in the application. For the purposes of Class Q, curtilage means, (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.
8. The appellant's statement confirms that the agricultural unit extends to approximately 16 acres and that the site location plan identifies the subject building and the deemed curtilage area. This shows the red line drawn tightly around the buildings with future occupiers reliant on the land edged blue in order for the occupation of the building to be both practical and desirable. Having regard to the definition of curtilage set out within the GDPO for the requirements of Class Q, I am satisfied that the land edged blue should be considered to be land within the curtilage of the subject buildings.
9. The appeal buildings were clearly constructed for agricultural use and retains structures consistent with the keeping of livestock. There is nothing in the evidence before me to suggest that there has been a material change of use of the buildings itself. As such whilst the buildings may not have been in use for agriculture on 20 March 2013, that they were in agricultural use when it was last in use, with the site and buildings having been used for goat farming up until 2000.
10. However, the Council have submitted a number of aerial photos which indicate that during the intervening years since the appellant has owned the site, the land indicated as curtilage to the subject buildings has not been in active agricultural use.
11. The aerial photos submitted by the Council appear to show that the land around the buildings has been used for paddocks in connection with the grazing of horses and it is also suggested a motocross track was in situ. The appellant also states that there have been intermittent non-agricultural uses on the farm, but does not accept that these have resulted in a material change of use. The GPDO only deals with the use of the 'site', authorised or otherwise, on the relevant date. Thus the 'site' does not benefit from Class Q rights if it was not solely in an agricultural use on the relevant date.
12. Whilst it is not for this appeal to determine whether there has been a material change of use of the land, the evidence before me indicates that the land has not been used solely for the purposes of agriculture. It is for the appellant to prove on the balance of probability that the site was used solely for an agricultural use as part of an established agricultural unit in compliance with Paragraph Q.1(a).

13. Schedule 2, Part 3, Paragraph W of GPDO sets out the prior approval process. It states 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. In this case, there is insufficient evidence that the site has been used solely in connection with agriculture.

Conclusion

14. Given my conclusion that the proposal would not be permitted under Schedule 2, Part 3, Class Q.1(a) of the GPDO, there is no need for me to consider the proposal against the conditions set out in Class Q.2(1) and I dismiss the appeal.

G Pannell

INSPECTOR