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# Appeal Decision

Site visit made on 23 August 2022

**by E Grierson BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 October 2022**

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**Appeal Ref: APP/E2205/W/22/3293137**

**Home Farm, Hythe Road, Smeeth TN25 6SP**

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Mr John Lightfoot against the decision of Ashford Borough Council.
  - The application Ref 21/01852/AS, dated 19 October 2021, was refused by notice dated 29 November 2021.
  - The development proposed is described as prior notification for the change of use of a agricultural building and land within its curtilage to a flexible commercial use (storage/workshop).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The description of the development proposed on both the application form and the appeal form do not accurately represent the nature of the appeal proposal. Therefore, I have taken the description of the development proposed in the banner heading above from the Council's decision notice as this provided the most accurate description of the proposed development for which prior approval is sought.
3. Schedule 2, Part 3, Paragraph W 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. It was on this basis that the Council refused to grant prior approval.
4. In their decision notice, the Council indicated two reasons for refusal, one relating to the existing use of the building and one relating to the listed status of the building. However, in a letter dated 30 May 2022, the Council confirm that the appeal site abuts the curtilage of a listed building but the building itself is not listed. The appellant has also provided a map from the Historic England website which indicates that the appeal building is not listed. As a result of this letter from the Council and the information provided by the appellant in relation to this, I am satisfied that the appeal building is not listed and therefore this reason for refusal will not be considered as part of this appeal.

## **Main Issue**

5. The main issue is whether the building was lawfully in agricultural use on 3 July 2012 as part of an established agricultural unit.

## **Reasons**

6. Class R permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within Class B8 (storage and distribution), C1 (hotels) or E (commercial, business or service) of the Use Classes Order. Paragraph R.1(a) states that development is not permitted by Class R if the building was not used solely for agricultural use as part of an established agricultural unit on 3 July 2012. Or 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 in the case of a building which was brought into use after 3 July 2012, for a period of at least 10 years before the date development under Class R begins.
7. On the application form, the appellant has stated that the use of the site on 3 July 2012 (or the last use before that date) was solely for agricultural use as part of an established agricultural unit. To support this, as part of the appeal, the appellant has submitted plans from a previous planning application<sup>1</sup> for a storage unit dated 17 August 2004. These plans are labelled to show the presence of farm buildings. Although the title of farm buildings would suggest they are used for agricultural purposes, it is not entirely clear if these layout plans relate to the appeal building and they do not confirm if the use labelled is a lawful one. Some details of another planning application<sup>2</sup> have also been submitted showing planning approval for a change of use from farm buildings to storage on the same site. However, this does not indicate which building(s) the application relates to and does not demonstrate the use of the appeal building or the unit as a whole. The evidence is imprecise in these respects.
8. A letter has also been submitted by the appellant from an occupier of a neighbouring property, although their address has not been provided. This states that the appellant was witnessed filling up the appeal building with straw in September 2004 and it has been in use ever since. They also state that it was previously occupied by sheep. Whilst I do not contest the contents of this letter, it provides little substantive evidence to clearly demonstrate the use of the appeal building. Similarly, the photos showing the appeal building occupied by various pieces of equipment does not demonstrate its lawful use.
9. This case involves a matter of judgement and I note that on my site visit I saw that the appeal building was being used for the storage of hay bales, which may be associated with agricultural use. However, in the absence of any convincing evidence submitted by the appellant to demonstrate the lawful use of the building, there is insufficient information to establish that, on the balance of probabilities, it was used solely for agricultural use as part of an established agricultural unit on 3 July 2012. Therefore, the proposed development would not comply with the limitations and restrictions applicable and consequently, it does not benefit from deemed permission under Class R of the GPDO.

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<sup>1</sup> 04/00434/AS

<sup>2</sup> 04/01491/AS

## **Conclusion**

10. 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 R of the GPDO. Therefore, the appeal is dismissed.

*E Grierson*

INSPECTOR