



Appeal Decision

Site visit made on 11 October 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/F1040/W/22/3300274

Beechwood Park, Main Road, Elvaston, Derby, Derbyshire DE72 3EQ

- 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 Beech against the decision of South Derbyshire District Council.
 - The application Ref DMPN/2022/0403, dated 21 March 2022, was refused by notice dated 16 May 2022.
 - The development proposed is described as 'Application to determine if prior approval is required for a proposed: Change of use of agricultural buildings to dwellinghouses (Use Class C3), and for building operations reasonably necessary for the conversion at Beechwood Park, Main Road, Elvaston, Derby, DE72 3EQ'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form did not include an accurate description of the proposed development, with it instead referring to the submitted Design and Access Statement. Consequently, the description in the banner header above has been taken from the appeal forms and the decision notice. I have dealt with the appeal accordingly.

Main Issue

3. Class Q(a) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the 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) of the Schedule to the Use Classes Order. Class Q(b) of the GPDO permits building operations reasonably necessary to convert the building referred to in (a) above.
4. Paragraph Q.1(a) of the GPDO states that development is not permitted by Class Q if the site was not solely for an agricultural use as part of an established agricultural unit on 20 March 2013 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.
5. The Council considers that the appeal building was not used solely for an agricultural use as part of an established agricultural unit as required under paragraph Q.1(a), and therefore the appeal proposal is not permitted development.

6. Given the above, the main issue is whether the proposal would be permitted development, with particular regard to whether the agricultural use requirements of paragraph Q.1(a) would be met.

Reasons

7. The appeal site comprises a steel framed, metal clad barn and the land immediately surrounding it. The existing barn is situated adjacent to the southern boundary of the middle of three enclosed fields which are located to the west of Beechwood Park, which accommodates a holiday let site including caravans, log cabins and glamping pods. The appeal site is accessed via the existing vehicular access to Beechwood Park.
8. The appellant contends that the appeal building has been in agricultural use since 2006. The Council however consider that at the date of the application the building was not being used solely for agricultural use and was in fact being used primarily for general storage associated with the holiday let site. I observed during my site visit that the whilst the appeal building was being used for the storage of various items and machinery including trailers and ride on mowers, many of these items appeared to be more related to general grounds maintenance than any specific agricultural use or activity. The three enclosed fields immediately adjacent to the appeal building contained no livestock and were largely empty save for a small number of items including pipes, pallets, fencing, and a small tractor.
9. However, the current use of the site and the building itself are not determinative since paragraph Q.1(a)(i) allows the permitted development where the site was in agricultural use as part of an established agricultural unit on 20 March 2013. In that context, the Council concede that there is no evidence to suggest that the building was not in agricultural use on the relevant date. The appellant seeks to support that position with a letter from a neighbouring farm owner stating that he harvested hay from the fields and made use of the storage facility erected by the appellant in 2006 for several years. However, I note that the letter does not provide information on the use of the site in 2013 specifically.
10. Notwithstanding the above, an agricultural building is defined in Schedule 2, Part 3, paragraph X of the GPDO as "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". Whilst this definition does not require the activity to make a profit, to be considered an agricultural building, it must be used as part of a trade or business. To my mind this means that the agricultural activity taking place must be undertaken on a commercial and organised basis.
11. I accept that the evidence suggests that the appeal building was historically used for agricultural purposes, and that there is no information before me which would indicate that it was not in such use on the relevant date. However, in order to be considered an agricultural building and benefit from the permitted development rights afforded under Class Q, it must also be used as part of a trade or business.
12. Other than confirming that the appeal building is separate from and does not form part of the wider Holiday Let site, or indeed form part of the associated Beechwood Park Licence, very little information has been provided in relation to

any connection with a trade or business. No substantive evidence has been provided by the appellant which would indicate that the site was operated for an agricultural trade or business on the relevant date. The letter from the neighbouring farm owner does not provide conclusive evidence in that regard. The Council has highlighted a lack of a DEFRA Holding Number being provided by the appellant, whilst no other supporting evidence such as accounts, tax returns or sales invoices and receipts have been provided to indicate that the activity at the appeal site has been carried out for the purpose of a trade or business.

13. Under Schedule 2, Part 3, paragraph W(3) 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, based on the evidence before me, whilst the site may have been used in connection with agriculture historically, it has not been sufficiently demonstrated that it was so used for the purposes of a trade or business. Consequently, I find that there is uncertainty as to whether the site was used solely for an agricultural use as part of an established agricultural unit. As a result, the proposal would not be permitted development under Class Q.

Conclusion

14. For the reasons set out above, I conclude that the proposal would not constitute permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore dismissed.

David Jones

INSPECTOR