

Appeal Decision

Site visit made on 24 October 2022

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2022

Appeal Ref: APP/L3815/W/22/3297757

Chalk Lane Nursery, 17a Chalk Lane, Sidlesham PO20 7LW

- 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 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr and Mrs Hunter against the decision of Chichester District Council.
 - The application Ref SI/22/00144/PNO, dated 19 January 2022, was refused by notice dated 18 February 2022.
 - The development proposed is agricultural barn.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Hunter against Chichester District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits works for the erection, extension or alteration of a building or any excavation or engineering operations which are reasonably necessary for the purposes of agriculture, subject to a number of criteria. As set out in the GPDO, the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.

Main Issue

4. The main issue is whether the proposal would be permitted development under Schedule 2, Part 6, Class A of the GPDO.

Reasons

5. For a proposal to be permitted development under Schedule 2, Part 6, Class A, the erection of a building must be undertaken on agricultural land comprised in an agricultural unit of 5 hectares or more in area, and be reasonably necessary for the purposes of agriculture within that unit. The Council has however raised concerns regarding the size of the agricultural unit and questioned whether the land is, as defined by the GPDO, in use for agriculture and which is so used for the purposes of a trade or business.

6. The proposed development would replace an existing glasshouse located within an area of land, which is approximately 2.2 hectares and owned by the appellants. In addition to this site, it is suggested that the agricultural unit includes two other parcels of land, one of which is used on a seasonal basis. The appeal is supported by letters confirming that these two parcels of land have been used by the appellants. One of the letters refer to the use of land by the appellants' for a period in excess of 15 years, whilst the other indicates that the land is being grazed from time to time. I have also had regard to an additional letter indicating that an additional 12.2 hectares would become available in the summer 2022 for hay cutting.
7. Though it is not necessary for the occupier to own the agricultural land for it to form a unit, the terms of occupation are relevant. In that regard, the presented documents however lack in detail, as they do not, for example, refer to exclusive possession or provide some security of tenure. In the absence of further evidence to the contrary, it cannot be established with certainty whether the ties between the appellants and these third parties can be regarded as farm business tenancies, and consequently, whether these parcels of land form part of the agricultural unit.
8. The appellants' submissions indicate that they have owned Chalk Lane Nursery for over 32 years, and live on the site in an agriculturally tied dwelling. I understand that the appellants have farmed Dexter cattle, sheep, pigs and chickens for the majority of this time, and are also making hay. Small scale activities of an agricultural nature were apparent as part of my site visit.
9. However, these considerations are not sufficient to establish the existence of a trade or business. The presented information is not substantiated by detailed evidence, for example showing details of the keeping of accounts, size of turnover... On the basis of the presented information, I cannot therefore be certain that the activities can be regarded as a trade or business as defined in paragraph D.1 (1) of the GPDO.
10. Having regard to the available evidence, I am not satisfied that the proposal meets the requirements of Schedule 2, Part 6, Class A of the GPDO. There is firstly no certainty that the development would be carried out on agricultural land comprised in an agricultural unit of 5 hectares or more in area and secondly that the proposed building is reasonably necessary for the purposes of agriculture and would be so used for the purposes of a trade or business. On this basis, I am not satisfied that the proposal can be regarded as permitted development.

Other Matter

11. The Council also considers that the proposal would fail to accord with the requirements of paragraph A.1 (b) of the GPDO. This states that development is not permitted by Class A if it would consist of the erection or extension of any agricultural building on an established agricultural unit where development under Class Q or S of Part 3 (changes of use) of this Schedule has been carried out within a period of 10 years.
12. Whilst two Class Q prior approval applications have been previously granted by the Council, I understand that these consents have never been implemented

and are no longer extant. Subsequent planning applications¹ for new dwellinghouses were approved by the Council, and these schemes appear to have been implemented. I have been presented with no evidence suggesting that conditions removing the permitted development rights afforded by Part 6 were imposed as part of these approvals. Accordingly, I find no conflict with the requirements of paragraph A.1 (b) of the GPDO.

Conclusion

13. As the appeal development fails to accord with the requirements of the GPDO, it is not necessary for me to consider whether to grant prior approval for the proposal. For the reasons detailed above, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR

¹ Local Planning Authority References SI/17/03417/FUL and SI/19/02417/FUL.