



Appeal Decision

Site visit made on 27 February 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 31st May 2023

Appeal Ref: APP/Z3825/W/22/3291115

Thistledown Cottage, Harbolets Road, West Chiltington RH20 2LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2 Part 3 Class Q of the Town & Country (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs Grocott against the decision of Horsham District Council.
 - The application Ref DC/21/2391, dated 20 October 2021, was refused by notice dated 15 December 2021.
 - The development proposed is prior notification for the change of use of an agricultural building with associated operational development to residential use (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO) planning permission is granted for the change of use of agricultural buildings and any land within its curtilage to dwellings together with building operations reasonably necessary to convert the building (permitted development). This is subject to conditions and limitations. The Planning Policy Guidance (the PPG) provides interpretation of the GPDO.
3. The GPDO enables a local planning authority to 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, the relevant conditions, limitations or restrictions. The Council considers it has not been demonstrated that the existing building was solely in agricultural use for an agricultural trade or business on or before 20 March 2013 and that the location or siting of the building makes it otherwise impractical or undesirable for the change of use to occur because there is the potential for noise and disturbance from equestrian activities nearby.
4. Paragraph 3(1) of the GDPO states that permitted development rights are subject to the provisions of the Conservation of Habitats and Species Regulations 2017 (the Regulations). The appeal site location is within the Sussex North Water Supply Zone where Natural England have advised that developments must not add to the impact of water abstraction on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites (protected sites). Accordingly, although not referred to in the Council's Reasons

for Refusal, I must consider whether the location of the site is impractical or undesirable in this respect also.

Main Issues

5. The main issues are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO; and if so, whether prior approval should be granted for the proposed development.

Reasons

Whether the proposal would be permitted development

6. Under Paragraph Q.1.(a) the permitted development right would not apply if "*(a) the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20th March 2013 (the relevant date), 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*". An 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture. Whether or not this is the case is a matter of fact and degree based on the merits of the case and the evidence presented.
7. The brick building on the appeal site is divided into five stalls each with its own door facing a hard standing leading to a small stable building beyond and a field access. The appellants advise that since they purchased the property in September 2020 the building has been used for storage of animal feed, to house chickens and for lambing; they have a flock of 30-40 sheep. At the time of my visit three stalls of the appeal building were being used to house chickens; one for storage of implements such as rakes; and one was empty aside from cupboards a microwave and sink.
8. There appear to have been planning applications between 1976 and 2001 that suggest that the building had been in use for residential and equestrian purposes and the sale particulars of Thistledown Cottage March 2020 may imply stable use. Photographs from Google Earth imagery shows livestock in the fields between 2005 and 2015: for example, some 22 animals on the land in 2009 and 17 animals in 2015. Whilst these are snapshots in time it constitutes some evidence of agricultural activity.
9. Mrs Daphne Rice owned the appeal building and adjoining land from June 1999 until 24 September 2020. Her sworn and witnessed Statutory Declaration confirms the land and buildings were used for keeping sheep during lambing, rearing of pigs and for the storage of straw, hay and machinery. In the absence of evidence to contradict the Statutory Declaration the Council accepts that it is likely that the use at the requisite date was agricultural in nature. I have seen no compelling evidence to lead me to a different view.
10. To meet Part X of Schedule 2, Part 3 of the GPDO it is also necessary to determine whether agricultural activities were carried out in connection with a trade or business on the specified date. Case law¹ has held that no one factor is decisive as to whether activities constitute a trade or business: whether the activity was carried out for pleasure, the person concerned was an enthusiastic amateur, the keeping of accounts, size of turnover and any profit made, should

¹ South Oxfordshire DC v East & SSE [1987] JPL 868

also be considered. It is not necessary for the activities to be the sole or major source of income or for the business to be so significant as to make a profit.

11. The Statutory Declaration states that surplus lambs, meat and fleeces were sold; that this was Mrs Rice's sole occupation; and that Mrs Rice's only other income was a pension. The Statutory Declaration has been sworn and witnessed by a Solicitor and is therefore of great weight. It points to the previous owner running a trade or business from the site. Case law² has held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.
12. I have seen no substantive evidence from the Council or others, to contradict or otherwise make the Statutory Declaration version of events less than probable. There could be a number of reasons why the previous owner did not have, or did not disclose, an Agricultural Holding Number or DEFRA records or give copies of any accounts to the appellant.
13. From the limited evidence before me, and for the purposes only of this appeal, I conclude that, on the balance of probabilities, the building was solely in agricultural use on 20 March 2013. On this basis the permitted development rights in Class Q of the GPDO apply to the appeal building. It is then necessary to consider whether the site meets the other requirements of permitted development.

Whether the location and siting is impractical or undesirable

14. The appeal building is located within an enclosed area to the north of the Thistledown Cottage and to the south of another small building³ with permission for private equestrian purposes. The Council is concerned about the potential for associated noise, odour and disturbance which would be harmful to the living conditions of occupiers of the proposed dwelling. The appeal site curtilage, as depicted by the red line on the application plan, is restricted to a small area around the building and does not include the land and building beyond.
15. Notwithstanding the appellants' comment that it would be reasonable to assume that the pastureland and equestrian building would be packaged with the proposed dwelling there is no mechanism to secure this. Very little information has been provided about the likely scale of any equestrian use on the adjacent land so I cannot confidently conclude there would be no harmful effects arising. Similarly, it would not be appropriate to impose a condition requiring the removal of the equestrian building beyond the red line of the application site even were I to conclude that such a condition would be appropriate in relation to a proposal for prior approval.
16. One way of complying with the Regulations in relation to water abstraction and the effect on the protected sites is to demonstrate water neutrality: that is that the use of water in the supply area before the development is the same or lower than after the development is in place. Article 3(1) of the GPDO requires that a development must not be begun or continued before the developer has received written notice of the approval of the local planning authority under Regulation 77.

² W Gabbittas v SSE and Newham LBC [1985] J.P.L. 630

³ Planning refs WC/87/97 and WC/78/01

17. There is provision for Regulation 77 applications to be made after any planning permission has been granted and the appellants have stated that they would undertake such an application. However, there is a high burden of proof on me, as the competent authority, to ensure that the proposal would not harm the integrity of the protected sites and accordingly I should be sure that no harm would result before allowing development to proceed.
18. The appellants could have provided a draft Regulation 77 Mitigation Strategy or similar showing how the matter could be addressed. In the absence of any such evidence, or the agreement of the Council and Natural England that such an approach would be satisfactory, I cannot confidently conclude that no such harm would ensue and so it would be unlawful for me to allow the appeal.
19. For the above reasons I conclude that the location or siting of the building makes it impractical or undesirable for the building to change to a dwelling house so I find conflict with the limitations of Paragraph Q.2.(e) of the GPDO.
20. In the alternative it would be necessary to refuse the prior approval application as the appellants have provided insufficient information to enable me to carry out an Appropriate Assessment under the Regulations to establish whether the proposed development complies with the relevant conditions, limitations or restrictions of the GPDO.

Other Matters

21. The appeal proposal seeks to address the reasons for refusal of a previous Prior Notification application. However, this does not lead me to any different conclusions in respect of the main issues in the appeal before me.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

S Harley

INSPECTOR