



Appeal Decision

Site visit made on 13 July 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal Ref: APP/Z3825/W/22/3306773

Nightingale Farm, Sincox Lane, Shipley, West Sussex RH13 8PT

- 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 and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Mr Kevin Jacobs against the decision of Horsham District Council.
- The application Ref DC/22/1340, dated 13 July 2022, was refused by notice dated 1 September 2022.
- The development proposed is described as 'prior notification for change of use of agricultural building to residential (C3) to form 5no dwellinghouses'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Article 3(1) and Schedule 2, Part 3, Class Q(a) and (b) of the GPDO grants planning permission for 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), together with any building operations reasonably necessary to convert the building to a use falling within Class C3 subject to limitations, restrictions and conditions.
3. Paragraph Q.1 contains the limitations or restrictions for Class Q. The Council's decision was that prior approval was required and it refused the application because it considered paragraph Q.1(a) was not met. This includes in (i) that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. Paragraph X of Part 3 defines an 'agricultural building' as a building used for agriculture and which is so used for the purposes of a trade or business. It also defines an 'established agricultural unit' as agricultural land occupied as a unit for the purposes of agriculture.
4. By virtue of paragraph W(1) of Part 3 where an application for a determination as to whether prior approval will be required is made, paragraph W(3) provides that the local planning authority may refuse the application where it considers that 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 applicable limitations or restrictions.

Main Issue

5. The main issue in this appeal is if prior approval can be granted under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO having regard to whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, including that the change of use would be from a use as an agricultural building on that date.

Reasons

6. For the purposes of GPDO paragraph Q.1(a) 'the site' in this case is the appeal site as defined by the red line in the application location and block plans which are consistent¹. It includes a central section of a row of similar barns. This central section is 'the building' for the purposes of GPDO Class Q(a) and (b).
7. At my site visit the eastern side of the building was used for storage, including hay or straw, commercial or domestic equipment or machinery, a bike and a classic car. The internally separate western side comprised horse looseboxes, part of a stable. The site also includes a covered loading area, a lorry body and lean-to used for equestrian storage and feed and a concrete apron, part of a courtyard for the complex of buildings and uses at Nightingale Farm.
8. The eastern side of the building and a narrow sliver of the western side would be retained and altered to convert it to the proposed residential change of use. The rest of the building, and the other structures on the site, would be demolished or removed leaving a small curtilage for the dwellings on two sides.
9. The appellant's statutory declaration (the SD) says that it relates to 'the agricultural building' defined by a red line in the plan on page 1, annotated as 'Existing Barn to be Converted'. The SD maintains that this building has always remained in agricultural use, including on 20 March 2013. However, and as I saw on the ground, the SD red line does not match the red line of the site. Consequently, the SD includes evidence about a section of this row of barns that adjoins the building and the site to the east. Even if this section was in agricultural use on 20 March 2013, it is not part of the building or the site in this appeal. Furthermore, the SD does not therefore purport to explain the use of the western side of the building or the site.
10. On the evidence that is before me, the western side of the building (then in agricultural use) and the other sections of the barns to the west were granted planning permission in 1999 to be used as stables for keeping and training racehorses. These stables were in use in 2007 when planning permission was granted for their full livery use. In each case the approved plans show the western side of the building as part of the stables. Between 2000 and 2006 permission was granted for gallops and a manège, as well as for a farm office in connection with farming and livery uses at Nightingale Farm. The approved plans each show the same large swathe of blue edged land around the complex of buildings at Nightingale Farm. This land comprised mostly fields or paddocks owned or controlled by the applicants, as well as the building and the site.
11. A statutory declaration for a Lawful Development Certificate in 2017 (the 2017 SD) related to land at Nightingale Farm defined by a red line in Plan A. The 2017 SD refers to 'the whole equestrian yard', ie then in situ on the land in Plan A. This land included the site and the building as well as most of the blue

¹ Drawing number 2207NI_R0_000

edged land shown in the earlier application plans outlined above. It does not refer to any agricultural use of land or buildings at Nightingale Farm in Plan A, including on the site or in the building.

12. An agricultural holding number 42/083/0332 is said to relate to 'the application site and other agricultural land owned by the applicant'². This was though in relation to another 'agricultural to dwelling' prior notification application at Nightingale Farm. The appellant has not given details of it, including a Council reference number or applicant name, nor a plan showing the extent of that site or the land in the agricultural holding to which the above number relates; which also relied on 'other land' elsewhere, including 18 acres of pasture land at Parham and two acres at Partridge Green 'all used for hay crops and sheep grazing'. Nor is there a plan in the SD or the appellant's final comments of what land or building(s) at Nightingale Farm formed a claimed 33-acre 'primary use registered holding for the cropping of hay and silage'.
13. Given their scale, it cannot be inferred with any certainty that the aerial photographs³ 'clearly show cropping lines in connection with the hay' as opposed to, for instance, field or paddock boundaries, including temporary or permanent internal dividing fences. Nor has the specific land in the photos said to have been cropped for hay been identified on a plan and anyway the photos are not from 2013.
14. Taking such a crop to be used in connection with keeping and training racehorses or keeping horses at full livery, and even if hay, straw or silage was stored in any part of the building, would be ancillary to these equestrian uses. There is no objective evidence that this activity and alleged use of the building or the site formed part of an independent, discernible agricultural unit. For example, the name or purpose of an established relevant trade or business in this respect, what entity owned or operated it or that it sold this crop off-site beyond Nightingale Farm.
15. Whereas the 'entire equestrian yard' referred to in the 2017 SD, including the land in Plan A incorporating the building and the site, was rented to tenants continuously between March 2011 and June 2013 and thereafter at least until 4 April 2017 – including therefore before, on and after 20 March 2013. While the use of land for grazing horses is within the definition of agriculture⁴, the western side of the building was used to keep and train racehorses or for horses at full livery. By definition and nature both of these equestrian uses include activities or services other than just putting horses out to graze. Keeping racehorses or liveried horses in paddocks at Nightingale Farm would not have been within the definition of agriculture. There is no evidence that if horses were grazed at Nightingale Farm they were not connected to either of these equestrian uses.
16. Between 1999 and 2017 there was a shift from agricultural to equestrian use at Nightingale Farm; it was at least in a mixed use for both uses at the time. This period and activity included at least part of the building on the site which was in use for stables. Accordingly, even if the eastern side of the building and that part of the site was in agricultural use, there was nonetheless a mixed agricultural and equestrian use of the site and the building overall.

² Letter dated 9 December 2016 by Elizabeth Lawrence

³ Council's appeal statement Appendix K

⁴ Section 336(1), Town and Country Planning Act 1990 (as amended)

17. The SD contains extracts from Council officer reports relating to various applications for development at Nightingale Farm and some development plan policies. However, it is factual, descriptive or circumstantial in nature relative to those proposals and specific sites or refers broadly to Nightingale Farm as a whole. Additionally, the 'agricultural building' edge red by the appellant in the plan on page 4 of the SD also lies to the east of the site and the building. In the extracts from three Class Q appeal decisions elsewhere, the definition of agriculture is common ground in the current appeal⁵. In another there was uncertainty about alternative (to agricultural) use of the subject building⁶ and lastly there was 'no evidence' to suggest the subject building was not in agricultural use⁷.
18. I find that the appellant's evidence is not sufficiently precise or unambiguous when set against the other evidence before me, such that on the balance of probabilities it has not been demonstrated that the site was used or was last used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or that the change of use would be from a use as an agricultural building on that date.

Other Matter

19. To benefit from a planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission (Article 3(4)). In this case condition 1 attached to planning permission SP/53/99 restricts the western side of the building to the keeping and training of racehorses. Alternatively, condition 3 attached to planning permission DC/05/2547 restricts the western side of the building to stabling used for full livery purposes and for no other purpose. Accordingly, the effect of either of these conditions is to exclude a grant of permission relating to this part of the building by the operation of statutory provision under the GPDO. Since I am dismissing the appeal in light of my findings in the main issue, this matter would not affect my decision or, therefore, the outcome of the appeal.

Conclusion

20. The permitted development rights in Class Q(a) and (b) of the GPDO do not apply to the building and prior approval should not therefore be granted.
21. For the reasons given above the appeal is unsuccessful.

Robin Buchanan

INSPECTOR

⁵ APP/D0840/W/16/3146275

⁶ APP/X1545/W/18/3198348

⁷ APP/P1133/W/15/3025096