



Appeal Decision

Site visit made on 7 August 2023

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

an Inspector appointed by the Secretary of State

Decision date: 11 August 2023

Appeal Ref: APP/Z3825/W/22/3311495

Wellers Bungalow, Marringdean Road, Billingshurst RH14 9EJ

- 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 Nicholas Humphreys against the decision of Horsham District Council.
 - The application Ref DC/22/1225, dated 29 June 2022, was refused by notice dated 23 August 2022.
 - The development proposed is prior notification for change of use of agricultural building to residential (Use Class C3) to form one dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The above description of development is taken from the Decision Notice as this more clearly describes the proposal.
3. 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 an agricultural building and any land within its curtilage to a use within Class 3 dwelling houses 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.
4. 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 that: development had begun before prior approval was given; 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; the development includes a flue and stairs which extend beyond the external elevations of the building; 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.

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

6. To benefit from Class Q the proposed change of use needs to be from an agricultural building: that is it needs to be in agricultural use at present. 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. There is no definition of agriculture in the GPDO so for planning purposes the meaning should be taken from s336(1) of the Town and Country Planning Act 1990 (the Act). This can include grazing of land for horses. The appellants indicate they produce about 6000 bales of hay/haylage per year from the 40-acre hayfield and 10-acre haylage field and that about 10 acres of land is used for paddocks. However, hay for feeding horses would amount to the keeping of them, rather than grazing, and the keeping of horses has been held by case law not to be agricultural use.
8. The Council and a Third Party consider the land and the barn are mainly used for equine purposes. The history of Wellers Bungalow includes stables dating from about 1949, which appear to have been used for racehorse breeding by a previous owner, and a Certificate of Lawfulness of Existing Use or Development Ref DC/05/2839, granted on 20 December 2002, which demonstrated that Wellers Bungalow had been occupied in breach of the agricultural occupancy condition for a period of 10 years.
9. The appellants purchased Wellers Bungalow, in December 2006, with some 70 acres of grassland although the extent of land currently owned by the appellants is not entirely clear as different figures are cited in the submissions. It appears the appeal barn was constructed shortly before this. In 2007 the Council granted permission Ref DC/07/0702 for an outdoor riding arena.
10. During my site visit I observed horses on the land to either side of the access drive, stables with open doors, and two horse boxes. At the time of my visit about a quarter to a third of the barn contained hay bales. The barn also contained equipment, pallets, buckets and other items. These do not appear to be domestic items stored whilst Wellers Bungalow was extended/modernised as may have been the case in the past. More probably they are used in connection with the keeping of animals. The appellants have not indicated the keeping of other livestock so on the balance of probabilities it seems likely that they are horse related.
11. The appellants do not dispute that horses are kept on at least some of the land and that at least some of the hay produced is used for the horses. It is possible to have parts of land in different uses but it has not been clearly demonstrated

as to which parts of the land are used for horses and which, if any, solely for agriculture. Moreover, the hay bales that I observed in the barn appear to be similar to those photographed by the Council in 2022 appearing to indicate a low turnover of sales of bales and possibly indicating these are for the horses.

12. The appellants state they farm a substantial crop of hay; that much of the hay was stored in the haybarn on the relevant date (as can be seen from the HDC photographs); and that excess hay is taken offsite by their contractor. There is little information explaining the way the appeal barn is currently used. The Council has granted prior approval Ref DC/20/1642 at Wellers Bungalow for the erection of two agricultural buildings to house machinery, hay and straw, one of which would be next to the entrance on the B2133 road for ease of transportation. I have very little information in relation to this case so I cannot conclude it demonstrates either the extent of an agricultural unit or the use to which the appeal barn was put.
13. The Planning Statement indicates the building is no longer suitable for agriculture. This appears to be contradicted by the assertion that the boarding erected on part of the northern elevation is to enable the better storage of hay. Nor does advice from property professionals that it would be better to move to redundancy of the current barn and transfer hay farming activity to the main hay field and front fields indicate that the appeal barn was solely in agricultural use as part of an agricultural unit.
14. The appellants have a Rural Payments Agency (the RPA) Single Business Identifier number from about 2008 for the basic payment scheme (BPS) in relation to the crop of some 6000 bales of hay/haylage and state they have had a payment every year since registering. They have expressed a willingness to show the paperwork confirming the most recent payment. Whilst this lends some support for agricultural use little information has been provided of the terms of the BPS in particular whether the definition of agricultural use coincides with that in the Act; the area of land for which the BPS is made; and whether the criteria now requires active farming of the land. Nor is it clear whether the appellants have taken advantage of the Lump Sum Exit Scheme. Moreover, little evidence has been provided to show the agricultural activities were carried out in connection with a trade or business on the specified date as required to meet Part X of Schedule 2, Part 3 of the GPDO.
15. Unlike in the Decision Appeal Ref: APP/Z3825/W/22/3291115 I have seen no evidence such as a land ownership plan indicating the extent of a relevant agricultural unit or a Statutory Declaration concerning the use of the appeal barn or the uses of the land either at the relevant date or at present. From the available evidence it seems most probable to me that the barn has been used for at best a mix of equine and agriculture.
16. Taking all the above together I find I have insufficient evidence to confidently conclude that the building is currently solely an agricultural building or that it was solely in agricultural use as part of an established agricultural unit for an agricultural trade or business on or before 20 March 2013. Accordingly, the proposal would conflict with the requirements of Paragraph Q.1.(a).
17. Under Paragraph Q.1(h) development would not be permitted if it would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.

18. There are remains of a separate lean-to brick glasshouse joined to the south wall of the barn. This amounts to a separate building now over-grown with the remaining brick walls in poor quality; the mono-pitch roof supports are rusty and broken; and there is no roof/fenestration glass. The glasshouse was damaged in the storm of 1987 and has not subsequently been repaired or replaced. The structural appraisal which accompanies the proposal states it is not suitable for conversion.
19. The proposal is to remove the glasshouse remains and construct a deck/steps on the south wall. This would not amount to the conversion of the agricultural barn and the deck/steps would amount to new building operations not reasonably necessary to convert the building. Furthermore, these appear to be outside the land edged red on the site plan. For the above reasons, I find the proposal would not meet the requirements of Paragraph Q.1(h).
20. Provided the flue serves heating for the proposed dwelling and would not exceed the height of the ridge of the roof I consider it would be reasonably necessary to convert the building.
21. The Council considers the boarding installed on much of the front elevation was to facilitate the proposed conversion. The proposed elevations indicate vertical cedar cladding which appears to be shown as ceasing before ground floor level although the plans are not very detailed. On this basis the Council could be right. However, at my site visit I observed the boards do not appear to be cedar and they have full height vertical gaps between them. The appellants state this was put up to protect the stored hay and would not be watertight for residential purposes. In this case I give the appellants the benefit of the doubt and conclude the development has not yet begun. I therefore find no conflict with the requirements of Paragraph Q.2(1) in this respect.
22. It is necessary for all the requirements to be met and I have found this not to be the case. For the reasons set out above I conclude the permitted development rights in Class Q of the GPDO cannot apply to the appeal building.
23. The Council's fourth reason for refusal relates to whether the site is in an impractical and undesirable location. However, in the prior approval procedure, this matter would only fall to be considered where the proposal was found to be permitted development. As I have found this not to be the case I do not need to consider further whether prior approval is required, or should be granted, under the provisions of the GPDO.

Other Matters

24. 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. In view of my above conclusion, it is not necessary for me to consider this matter further.
25. The appellants express dissatisfaction with the Council's handling of the case most particularly not allowing the opportunity to address the potential reasons for refusal. However, this is not a matter for me in this appeal.

26. The appellants have provided some sketches of other examples of Class Q schemes. From what little information is available with I cannot identify such similarity to the facts of the case before me that would lead me to any different conclusion.

Conclusion

27. For the reasons set out above and taking into account all other relevant matters raised I conclude that the appeal should be dismissed.

S Harley

INSPECTOR