



Appeal Decision

Site visit made on 16 August 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/Z1510/W/22/3312509

Cottons Farm, Sculpins Lane, Wethersfield, Braintree CM7 4AY

- 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 appeal is made by Mr G Boyd against the decision of Braintree District Council.
 - The application Ref 22/01887/COUPA, dated 13 July 2022, was refused by notice dated 6 September 2022.
 - The development proposed is Change of Use of Two Agricultural Buildings to Five 'Smaller' Dwellinghouses (Use Class C3) and for Associated Operational Development.
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Decision

1. The appeal is dismissed.

Background

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), consent is granted 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 C3 (dwellinghouses), subject to limitations and conditions set out in paragraphs Q.1 and Q.2.
3. Paragraph Q.1 sets out circumstances where development is not permitted. Q.1(a) states that development is not permitted if— (a) the site was not used solely for an agricultural use as part of an established agricultural unit— (i) on 20th March 2013, 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, or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.
4. The Council's reason for refusal relates to whether or not the building was an agricultural building and whether the site was solely for an agricultural use as part of an established agricultural unit on 20 March 2013. The appellant's evidence refers to (i) and (ii) of Q.1(a), so I have had regard to both positions.

Main Issue

5. The main issue is whether or not the proposal is permitted development under Schedule 2, Part 3, Class Q of the GPDO.

Reasons

6. Paragraph X of Part 3 states that an “agricultural building” means 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.
7. I am provided with Statutory Declarations dated April 2018 (herein SDs) witnessed by the Commissioner for Oaths from the appellant and Mr Morris. In summary, the appellant declares he allowed Mr Morris to occupy a large area of the property to keep free-range chickens continuously from December 2012 to May 2015. Mr Morris declares that he was looking for land to raise chickens and he kept chickens continuously at the property between December 2012 and May 2015. Both SDs confirm they were allowed to roam during the day and shut in the barns at night.
8. As the SDs are signed and witnessed, I have no reason to doubt part of the property including the appeal site was used for the keeping of chickens between the dates set out. However, the SDs are very limited in detail in respect of the nature of the previous use. The reference to a ‘large area’ does not explain how much of the appeal site and other land was in use. The reference to free-range chickens being shut in the barn at night is reference to good practice, but it provides little understanding of the nature of the use.
9. The SDs and other evidence provided does not fully explain or demonstrate the scale and exact nature of the previous activity. For example, it does not explain the number of birds, the purpose for which and the way in which they and the site were managed for a trade or business, or any suggestion of income or turnover levels. These therefore, do not provide sufficient evidence it constituted an agricultural use for the purposes of a trade or business.
10. The appellant’s chronology includes extracts of a Level 3 Historic Building Record to explain the historical use of the site and wider unit. That it is of mid-16th century origin, was subject to 17th and 19th century expansions and improvements, and 20th century alterations, does not demonstrate the building was an agricultural building on a site solely for agricultural use as part of an established agricultural unit for a trade or business on 20 March 2013.
11. At my visit immediately around the buildings was either low grassland or taller vegetation that had been subject to maintenance. Much outside this and within the wider surrounds included taller plants, scrub and brambles. Around the buildings were small piles of rubble, building materials, paraphernalia, and some small temporary buildings. Internally, what I saw of the larger building included a small cage or pen, wood, and some construction paraphernalia. While I would not necessarily expect observations at a visit to be conclusive in respect of Q.1(a)(i) or (ii), what I saw does not add significant weight and was not demonstrative that the building was an agricultural building on a site solely for an agricultural use as part of an established agricultural unit for the purposes of a trade or business on 20 March 2013.
12. As the SDs declare the use of the site for keeping chickens occurred continuously between December 2012 to May 2015, the use of the site is over a period that includes 20 March 2013. On this basis, based upon the evidence before me, criteria (ii) of Q.1(a) is not met, because the site was in use on 20 March 2013.

13. The Council approved a similar (now lapsed) scheme to that before me in 2018¹, finding the evidence sufficient to determine the proposal was compliant with Q.1(a) at that time. It now cites a subsequent judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 (the NWP judgement). That judgement found that when it is in issue, an authority is bound to consider and determine whether a development falls within the definitional scope of a particular class of the GPDO. The judgement clarifies the interpretation of the legislation and is a material change in circumstances since the 2018 decision. There is no evidence advanced demonstrating that the approach and findings in the NWP judgement are now incorrect.
14. The appellant has referred me to an extract of a delegated report assessing Q.1(a) for a proposal at a different site². As it is an extract of a delegated report the evidence provided is not fully clear and it is also not clear if that decision was made before or after the NWP judgement. Even if the Council had been inconsistent in its findings or requirements in respect of those previous cases, in respect of this specific appeal proposal it is incumbent upon me to assess its compliance with the legal requirements in the GPDO based upon the submitted evidence. The previous and other decision referred to me, do not demonstrate that paragraph Q.1(a) of the GPDO is passed for this appeal proposal. Therefore, I attribute them limited weight.
15. Where the developer has provided insufficient information to establish whether the development complies with any conditions, limitations or restrictions in Part 3, under paragraph W(3) of the GPDO an application may be refused. Based upon the evidence before me, I am not able to conclude that it has been demonstrated that the buildings or appeal site were used for an agricultural use for the purposes of a trade or business within an established agricultural unit on the relevant date. Therefore, it is not demonstrated the proposal falls within the definitional scope of permitted development Class Q of Part 3.

Other Matters

16. The evidence suggests the installation of a French drain is in relation to a path and is not for the conversion of an existing building sought by this appeal. The Council has not found against the proposal in respect of any other limitations and restrictions set out in Class Q.1, or indicated prior approval is required for the matters listed in Q.2 of Class Q. Based upon the evidence before me I see no reason to disagree. However, given my findings above, these are all matters that do not alter the outcome of the appeal.

Conclusion

17. For the reasons given, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Therefore, the appeal does not succeed.

Dan Szymanski

INSPECTOR

¹ Ref. no. 18/01373/COUPA.

² Ref. no. 19/01179/COUPA