



Appeal Decision

Site visit made on 16 August 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/W1525/W/20/3263156

Town Farm Yard, Main Road, Woodham Ferrers, Chelmsford, CM3 8RF

- 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) Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Ms I Dormer against the decision of Chelmsford City Council.
- The application Ref 20/00504/CUPAQ, dated 20 March 2020, was refused by notice dated 15 May 2020.
- The development proposed is conversion of existing buildings to form 2 new larger residential dwelling houses (C3) plot 1 The Stables, plot 2 The Old Dairy.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has confirmed it is satisfied that the floorspace requirements of Class Q have been complied with and does not seek to defend reasons for refusal 4 and 5. I have no reason to disagree and have not considered this issue further.

Main Issues

3. The main issues are:
 - whether or not the curtilage associated with the proposed dwellings would be in accordance with the definition in paragraph X;
 - whether or not the proposed development meets the requirements of Class Q with regard to the buildings to be converted;
 - whether or not, the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013; or, 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.

Reasons

Curtilage

4. The appeal site is a discrete area with clear demarcations between it and the surrounding land uses. Other than the access road, the surrounding land does not have a relationship with the site beyond that of being proximate.
5. Part 3 Paragraph X of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) is clear as to how curtilage is to

be construed in the context of Class Q and that it is to be the lesser of the two options. It is a condition with which the proposed development must comply. From my observations at my site visit, the curtilage is to be no larger than the land area occupied by the agricultural building. In light of this wording of paragraph X and layout of this site, I consider this should be applied to each proposed dwelling and its curtilage individually.

6. The appellant was not required to submit a floorplan as part of the application. Their statement accepts that written dimensions and description should be sufficient for determining compliance. The planning statement submitted in support of the original application and drawing number NTF003 both clearly state that the internal net floorspace area of Plot 1 is 185 sqm and the curtilage is 200 sqm. Internal net floorspace area is unlikely to be the same as land area occupied by the agricultural building. The planning statement later confirms that the gross internal floor space of all buildings would be 400 sqm. However, the buildings at Plot 1 are indicated to be smaller than Plot 2 with its internal net floorspace of 200 sqm. Extrapolation of these figures would suggest that the land area occupied by the buildings at Plot 1 would be less than 200 sqm and therefore smaller than the curtilage. This distinguishes this case from another appeal¹ cited by the appellant, as I have made my determination using the appellant's submitted figures. In the absence of more precise calculations, I cannot be certain that the curtilage of Plot 1 falls within the limits imposed by paragraph X.
7. It was open to the Council, under paragraph W.(9) of the GPDO, to seek further clarification from the appellant on this point. However, I am mindful that prior approval would be deemed to be granted were the Council to fail to issue the decision within the prescribed time limits.
8. For the reasons given above, the proposed development therefore does not comply with Part 3, Paragraph X of the GPDO and as such does not meet the definition of permitted development set out therein. It is open to me to consider whether a smaller curtilage could be granted. However, given the nature of the site I have described above, it would not be possible for me to do so in this case.

Buildings to be Converted

9. Case law has confirmed that where a term is not given a precise meaning through either primary or secondary planning legislation, its 'ordinary' meaning should be ascertained when constructing the GPDO in a broad or common sense manner².
10. Paragraph Q.(a) of the GPDO clearly defines the permitted development as a change of use of a building. The use of the indefinite article ('a') confirms that it is a building in the singular that is being referred to. Consequently, the permitted development right cannot apply to two buildings being converted to form one dwelling. This is not a contrivance, but the ordinary meaning of 'a' read in this context. Paragraphs Q.1 (a)(ii), Q.1(h), Q.1(m) and Q.2(e) and (f) all refer to 'a' building or 'the building'.
11. Paragraph Q.1(b)(i)(bb) refers to 'the existing building or buildings changing use to a larger dwelling house or dwellinghouses'. On an ordinary reading this

¹ APP/E5330/D/19/3226314 dismissed 28 January 2020

² Evans v SSCLG [2014] EWHC 4111 (Admin)

allows, such as is the case in this appeal, the conversion of more than one building to more than one dwellinghouse, within a single application.

12. There are other uses of 'a' in paragraphs Q.(a) and (b). However, these are all in relation to the change of use and what it is from and to. This is a specific action, from one use to another. It does not offer any guidance as to any other aspect of the Class Q process.
13. I do not find the appellant's interpretation to be sufficiently compelling to overcome the ordinary interpretation of Class Q I have set out above. There is insufficient clarity regarding a previous decision³ of the Council for me to be able to ascertain if that related to two (or more) agricultural buildings being converted to one dwelling. However, even if that were what was permitted, it would not change my interpretation of paragraph Q.(a).
14. It is common ground that 'dwellinghouse' is not defined for the purposes of Class Q. Paragraphs Q.1(c) and (d) expressly allow for more than one unit of accommodation to be created through the operation of the GPDO. This is what was permitted by two of the cases cited by the appellant⁴. Both parties have also referred to the Gravesham⁵ ruling and I have also been directed to an appeal decision⁶ on an application for a lawful development certificate to support the appellant's assertions that a dwellinghouse can comprise of two separate buildings. However, while no limitations are imposed by Class Q regarding the physical form the resultant dwellings take, as I have found that the provisions of Class Q only allow for conversion of a building, logic dictates that any resultant dwelling would also have to be contained within a building. The factors that informed the other cited cases would therefore not be applicable to this prior approval appeal.
15. There may be some support for taking a purposive approach to the interpretation of regulations if their meaning is not clear. However, there is no evidence before me as to the intention of Government when drafting Class Q. I therefore have no basis upon which to make such an assessment.
16. For the reasons given above, the proposed development would not meet the definition of permitted development as set out in paragraph Q.1(a).

Agricultural Use

17. Paragraph Q.1(a) of the GPDO states 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 the 20 March 2013 or, 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.
18. Part 3 Paragraph X of the GPDO 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 'established agricultural unit' as agricultural land occupied as a unit for the purposes of agriculture on or before 20th March 2013 or for 10 years before the date the development begins. Whether or not the

³ 19/01811/CUPAQ

⁴ 20/01070/CUPAQ & 20/00152/CUPAQ

⁵ Gravesham Borough Council v Secretary of State for the Environment and Another (1984) 47 P. & C.R. 142

⁶ APP/R5510/X/18/3206551 allowed 8 January 2019

appeal building was an 'agricultural building' on or before the relevant date is a matter of fact and degree based on the evidence presented.

19. It is common ground that the site was in agricultural use in 2005. The appellant has not convincingly demonstrated the site was in agricultural use beyond this date or at 20 March 2013.
20. The next chronological reference to the use of the site comes from the officer report to a previous application⁷ where a representation from a local resident stated that the house at Town Farm was no longer in the ownership of the applicant and the site had not been used for farming purposes since November 2012. Given this was expressing concerns about the proposed development, I have no reason to dispute these comments. The further comments submitted by the appellant in the letter dated 26 September 2016 does not provide any substantive evidence as to when the agricultural use continued until.
21. The pictures submitted by the Council dated October 2015 indicate at least some of the site being used for storage which appeared to be predominantly domestic in nature. However, it is unclear to what extent the buildings were used for this storage or for how long. While the timeline provided by the Council from Companies House does show the registered office of Chelmer IT Support being 'Town Farm' between February 2012 and December 2015, this is not compelling as to the use of the appeal site.
22. I cannot be certain when various internal and external works to the existing buildings were carried out, or that they would demonstrate if there had been a material change of use of the site. There is therefore insufficient evidence before me to demonstrate that a material change of use of the site has occurred.
23. Both parties have referred to other appeal decisions in support of their respective cases. I have had regard to these, however the nature of this matter turns on the facts of this appeal. I have reached my conclusion on this basis.
24. The evidence before me is limited. However, on what I have seen, the site has a dormant agricultural use as there is no substantive evidence before me to demonstrate that a material change of use of the site has occurred. In this respect, the appeal site would benefit from the permitted development rights contained within Class Q of the GPDO.

Other Matters

25. The appeal site falls within a zone of influence where Natural England has identified that increased recreational pressure arising from residential development would have likely significant effects on Habitats Sites. Article 3(1) of the GPDO imposes a condition requiring that development which is likely to have a significant effect on a Habitats Site must not begin until the developer has received written notification of the approval of the local planning authority under Regulation 77 of the Conservation of Habitats and Species Regulations 2017. The evidence does not confirm whether such approval has been obtained, but as I am dismissing the appeal for other reasons I do not need to consider this matter further.

⁷ 16/00167/COUPA

26. The manner in which the Council did or did not correspond with the appellant during the application process is not a matter that can be addressed through this appeal.

Conclusion

27. Even if I were to find that the prior approval matters and conditions set out in the second main issue were met, and notwithstanding I have found the third main issue does meet those matters and conditions, it would not make the proposed development acceptable under Class Q since it would not comply with the description of permitted development as set out by Schedule 2, Part 3, Class Q of the GPDO. It is for this reason that the appeal should be dismissed.

J Downs

INSPECTOR