



Appeal Decision

Site visit made on 3 October 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/U1430/W/23/3314620

**The Hay Barn, Downash Farm, Rosemary Lane, Flimwell, Ticehurst
TN5 7PS**

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs Nicola Roberts against the decision of Rother District Council.
 - The application Ref RR/2022/2187/PN3, dated 24 August 2022, was refused by notice dated 19 October 2022.
 - The development proposed is described as 'changing the use from agricultural use to Class C1 under the Class R of the Town and Country Planning (General Permitted Development) Order 2015 (referred to as the GPDO).'
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Decision

1. The appeal is dismissed.

Applications for costs

2. A cost application has been made by Mrs Nicola Roberts against Rother District Council, which is the subject of a separate Decision.

Preliminary Matters

3. Under Schedule 2, Part 3, Class R 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 a building and any land within its curtilage from a use as an agricultural building to a flexible commercial use subject to limitations and conditions. The proposal seeks to change the use of an agricultural building to a hotel (Class C1) and I have therefore considered the appeal accordingly.
4. There is a typographical error on the decision notice, which cites Part 1, instead of Part 3 of the GPDO. The appellant is aware of the relevant part of the legislation and has provided a copy of this within their submission. As a result, I do not find that the appellant has been prejudiced by this error.

Main Issue

5. The main issue is whether the proposed development would be permitted development under Article 3(1) and Schedule 2, Part 3, Class R of the GPDO.

Reasons

6. For the proposed development to benefit from Class R, the building had to be used solely for an agricultural use as part of an established agricultural unit on 3rd July 2012. 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.
7. It is clear from the evidence before me that the building has historically been used for agricultural purposes. The barn no longer forms part of an existing agricultural holding and appears to have not been used for agricultural purposes for some time. At the time of my site visit, the barn was not in use. The appellant's Statement of Case states that the barn became redundant in 2009 and its last use was agriculture. The appellant states the barn was redundant at the time she purchased the barn in November 2019 and has remained redundant ever since. However, this contradicts the appellant's notification letter to the Council, which states that the building 'is currently used for storage', which represents a break in the agricultural use.
8. Based on the contradictory evidence before me, I am not satisfied that the building was last in use for agricultural purposes as part of an established agricultural unit. While planning permission has not been granted for a change of use, this does not conclusively prove that another use has not occurred. Consequently, I cannot be satisfied that the barn meets the requirements of R.1(a). As a result, the proposal does not benefit from the Class R permitted development rights.
9. Even if the barn was deemed to be compliant with R.1(a), it is unclear from the information before me whether the size of the barn would comply with condition R.3.(a). The appellant states that the barn measures 149 square metres. Although this is not disputed by the Council, third parties have provided a copy of the latest sales particular, which states that the building measures 154 square metres. I have not been provided with any scaled plans and therefore the most credible evidence before me is the recent sales brochure, which would indicate that the building is above 150 square metres. Consequently, I cannot be satisfied that it would meet the requirements of R.3.(1)(a).
10. Given my findings above, in relation to the use of the building, it is not necessary for me to consider the prior approval matters.

Other Matters

11. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on Inspectors to consider relevant Directives¹ and whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by development that is said to be permitted development or in a prior approval appeal. Section 40 of the Natural Environment and Rural Communities Act 2006 also requires every public authority to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Accordingly, EPS must be taken into account when making my decision. Based on the evidence before me, my site visit and third party representations, there is a reasonable likelihood of protected species being present and affected by the development. However, as I am dismissing

¹ Habitats Directive (Council Directive 92/43/EEC) and the Wild Birds Directive (Directive 2009/147/EC)

the appeal for other reasons, there is no prospect of the development affecting EPS and it is therefore not necessary for me to consider this matter further.

12. The appellant states that the Council has approved 6 units of holiday accommodation on land adjacent to the barn, which once formed part of the same agricultural unit. Based on the limited information before me, I am unable to comment on the particular circumstances of this other case. Nevertheless, I am required to determine the appeal based on the legislation set out within Schedule 2, Part 3, Class R of the GPDO.
13. I note the concerns raised by the appellant in relation to the Council's handling of the application; however, these are not relevant to my findings on this appeal.

Conclusion

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

A James

INSPECTOR