



Appeal Decision

Site visit made on 20 February 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2024

Appeal Ref: APP/L3815/W/22/3295357

Oxencroft, Ifold Bridge Lane, Ifold, Loxwood RH14 0UJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant prior approval required under Article 3 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 Stephens against the decision of Chichester District Council.
 - The application Ref 21/01697/PA3Q, dated 25 May 2021, was refused by notice dated 23 September 2021.
 - The development proposed is described as 'simple conversion of a stone agricultural building into a C3 residential dwelling. The addition of windows, as allowed under Class Q PD, which ensures the provision of adequate natural light in all habitable rooms.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. While the appellant has included their wife, as well as a company name on the appeal form, it is the applicant who has a right of appeal under section 78 of the Act. I have therefore taken the name of the appellant from the application form.

Main Issues

3. The main issues of the appeal are:
 - Whether the building would satisfy the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO); and
 - The effect on the Arun Valley SPA, SAC and RAMSAR with particular regards to water neutrality.

Reasons

Whether in agricultural use on 20 March 2013

4. Class Q permits development consisting of (a) a 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) of the Schedule to the Use Classes Order. For the purposes of Part 3, "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.
5. Development is not permitted by Class Q 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.

6. The main thrust of the appellant's case is that there has been no change of use of the building and it remains agricultural. The appeal building is constructed of breeze block, with wooden cladding and a corrugated cement roof. During my visit I saw the building was being used to store various items, such as hay, wood, a fridge freezer, tools, and an oven. Various tools and equipment were located within the yard around the building.
7. Section 336 of the Town and Country Planning Act 1990 (as amended)(the Act) states that "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.
8. Aerial photographs are asserted to show the building was in agricultural use on 20 March 2013 as part of an established unit [sic]. However, while the photographs show a building was present prior to 2013, it is not possible to determine from the aerial photographs how the building and associated land was being used at that time.
9. The appellant asserts the building has a history of different agricultural uses including keeping of sheep, storing of hay, an agricultural workshop and agricultural storage, including the appellant's tractor and hay making equipment. The appellant has provided me with a County Parish Holding (CHP) Number, 42/164/0221. However, it is not clear when the CHP was applied for, or the livestock that have been located at the site. Furthermore, there is no detail regarding the hay which has been produced. It is therefore not clear whether the land and building were used for the purposes of a trade or business.
10. A statutory declaration, signed by the previous owner of the site, states throughout their ownership of the property, it has been used for agricultural and agricultural storage purposes and since around 2013, has been used as an agricultural contractor's yard by an individual who is an agricultural contractor. I have been provided with a statutory declaration signed by the agricultural contractor referred to above, which confirms they occupied the property between 1 January 2010 and 28 November 2019 and used the appeal building solely for the running of their 'agricultural' business.
11. A statutory declaration, signed by the owner of a business located opposite the appeal site, states they have engaged the aforementioned agricultural contractor from his, then, yard which was at the appeal property and that the appeal building was used solely for the running of the agricultural contractor's agricultural business in 2013. A statutory declaration, signed by the occupant of Lakeside Farm, confirms the then owner of the appeal site purchased the land on 21 July 1986 and that the appeal building was used solely for the running of his [sic] agricultural business in 2013.

12. The evidence points towards the appeal site having been used as an agricultural contractor's yard on 20 March 2013. Although it is not explained what is meant by the term 'agricultural contractor', in my experience, an agricultural contractor will usually visit other landholdings and carry out specialised, seasonal or temporary services to farmers. While an agricultural contractor will often carry out work on agricultural land, the activities which are undertaken where the business is based are likely to include storage of machinery and other items used in conjunction with the contractor's business.
13. Such activities do not constitute an agricultural use, nor can these activities be considered as ordinarily and reasonably incidental to agriculture, since the storage activities are likely to be carried out on a different planning unit to the agricultural activities. Even if some agricultural activities were carried out at the appeal site during 2013, if the site was used for the purposes of an agricultural contracting business, it would be in mixed use and not agricultural use, as required by the GPDO.
14. The Council advises a Planning Contravention Notice was completed for the site on 15 February 2021, which stated that Premier Tree Care and Conservation own the site and have done since November 2019. The Council states the Premier Tree Care & Conservation Ltd website advises that the company offers service including land clearance, tree surgery, stump grinding, commercial land clearance, landscape gardening, hedges and shrubs (which I shall refer to as a tree surgery business). Such activities would, most likely be carried out off site.
15. It was not possible for me to determine from my site visit how machinery which was being stored has been used. While the appellant has not explained whether the appeal site is used as part of their tree surgery business, the appellant does not dispute they run Premier Tree Care and Conservation. Indeed, the appellant refers to Premier Tree Care & Conservation Ltd on their Appeal Form. A number of interested parties also suggest the appeal site has been used as a forestry business and for tree surgery work.
16. The storage of machinery and other items used in association with a tree surgery business would not constitute an agricultural use. Although the GPDO requires consideration as to how the building was used on 20 March 2013, a building which is used as part of a tree surgery business would not constitute an agricultural building and so permitted development rights under Class Q would not apply.
17. A representation provided by an interested party in response to the appeal also suggests the land was not farmed but was used as a quad bike/motocross track, although a third party had cut the grass. The representation does not comprise a statutory declaration, which significantly limits the weight I can give to suggestions regarding the historic use of the site. Nevertheless, the appellant has not explained in sufficient detail the nature of the activities which have been carried out at the site.
18. From the evidence provided, it seems unlikely the appeal building was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. Furthermore, there is ambiguity as to how the building has been used since that time. Consequently, it has not been shown that the proposed development is development which would be permitted by Class Q of the GPDO.

19. The appellant has referred to a number of examples of approvals, which are asserted to be similar to the appeal scheme. However, I do not have full details of the schemes referred to and, while they may be physically similar to the appeal building, it is not clear whether the circumstances surrounding their use are comparable.

Water neutrality

20. The Council also refused the application on the basis that it cannot be established that the proposal would not be likely to have a significant effect on the Arun Valley SPA, SAC and Ramsar. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended)(the CHSR).
21. A Regulation 77 application may be submitted and approved after prior approval is given for the development. There is a right of appeal against any decision by a local planning authority to refuse a Regulation 77 application, to be treated as an appeal against a refusal of an approval required by a condition imposed on a grant of planning permission under Regulation 78(3)(a) and section 78(1)(b) of the Act.
22. However, the appellant has applied for a determination as to whether prior approval is required, not under Regulation 77 of the CHSR. While the requirements of both the prior approval process and Regulation 77 must be met before the development can be lawfully begun, it does not follow that the prior approval must be dismissed.
23. Nevertheless, for the reasons given above, I find the proposed development does not meet the limitations set out within Schedule 2, Part 3, Class Q of the GPDO and so the appeal must fail.

Conclusion

24. For the reasons given above the appeal should be dismissed.

M Savage

INSPECTOR