
Appeal Decision

Site visit made on 16 May 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/X3540/W/23/3327604

Shrubbery Farm, Ipswich Road, Charsfield, Suffolk, IP13 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under 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 Mr & Mrs Saunders of Potsford Bridge Group Ltd against the decision of East Suffolk Council.
 - The application Ref is DC/22/4158/P3R.
 - The development proposed is described as change of use of agricultural building to a flexible use.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether the application or subsequent appeal was made before development began.
3. Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within Class B8 (storage and distribution), Class C1 (hotels) and Class E (commercial/business/service). Class R does not however permit any operational development, which is usually subject to a subsequent planning application if it amounts to development.
4. Development permitted under Class R is subject to a series of conditions. Condition R.3 states that *'before changing the use of the site under Class R...the developer must...where the cumulative floor space of the building exceeds 150 square metres...apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to transport and highways impacts, noise impacts, contamination risks on the site and flood risks on the site'*. Paragraph W(11) of the GPDO, which is engaged by Condition R.3, states that the development must not begin before one of three occurrences. These being confirmation that prior approval is not required, prior approval being granted or the expiry of 56 days without the local planning authority determining if prior approval is given or refused.
5. Accordingly, it follows that prior approval cannot be granted for development that has begun, even if it is not complete. This has been confirmed by the

Courts¹. As a result, prior approval cannot be granted if development under Class R has commenced, that being the change of use of the building from agriculture to one of the specified uses.

6. The Courts² have also confirmed that a change of use may have begun even if the building is unoccupied. In considering this point, two factors are relevant but neither is decisive: 1) the physical state of the premises and 2) the actual, intended or attempted use. Indeed, this approach was endorsed in the Supreme Court³, where it was held that *'too much stress...[has] been placed on the need for "actual use".... it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is.'*
7. In this case, the building in question is not occupied or in an active commercial use. Nevertheless, for the reasons set out in the preceding paragraph this is not determinative. It is currently laid out as shown on the drawings as several small units that could be used for storage or as workshops. Internal subdividing walls have been erected, plastered and painted. Skirting board has been fitted and UPVc doors installed. Some of the units have the floors laid. All have electricity supplied. The roof and external elevations have also been reclad. What is apparent is the building is no longer in agricultural use and could not be used as such. Indeed, it is capable of being used for commercial purposes and this is the objective intention of the appellant, as evidenced by the submission of the application and appeal. Accordingly, the commercial use has begun contrary to Condition R.3.
8. Thus, as a matter of planning judgment I am satisfied that the change of use applied for has already begun. As a result, and when having regard to the terms of Condition R.3 and Paragraph W(11) of the GPDO, alongside relevant caselaw, it follows that prior approval cannot be granted in this instance.

Other Matters

9. The appellant has referred to several other appeal decisions where Inspectors have not considered operational development. However, in those cases it would appear that operational development had not begun and nor had a change of use occurred. As a result, there is no inconsistency between my findings and those of the other Inspectors in the appeal decisions submitted.
10. In addition to the main issue above, the Council have raised concerns as to whether the appeal building was in an agricultural use as part of an established agricultural unit on the relevant date and the absence of a Flood Risk Assessment (although one has subsequently been submitted with this appeal). Nevertheless, given my findings above it is not necessary to consider these points further as the outcome of the appeal would be unaffected.

Conclusion

11. In conclusion, for the reasons given above the appeal is dismissed.

Graham Chamberlain,
INSPECTOR

¹ Winters v SSCLG & Havering LBC [2017] EWHC 357 (Admin).

² Impey v SSE & Lake District SPB [1981] JPL 363

³ Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15