



Appeal Decision

Site visit made on 13 June 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/W1525/W/23/3334303

Agricultural Building on Land at Field North of Mill Hill Farmhouse, East Hanningfield Road, Sandon, Chelmsford CM2 7TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 John Lowe against the decision of Chelmsford City Council.
 - The application Ref is 23/00918/CUPAQ
 - The development proposed is determination as to whether the prior approval of the local planning authority is required for the proposed change of use from one redundant agricultural building to two larger dwellinghouses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 21 May 2024, Statutory Instrument 2024 No 579 (SI) came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Article 10 of this SI introduces transitional arrangements so that any development that is permitted under Class Q immediately before 21 May 2024 but is no longer permitted as a result of this Order will continue to be permitted until the end of 20 May 2025. Both parties have been consulted on the changes and I have taken their comments into account. Due to the transitional arrangements, I have proceeded to determine the appeal in accordance with the GPDO provisions that were in force at the time the original application was submitted. All references to the GPDO in this decision therefore relate to the version that was in force at that time.
3. During the appeal process the appellant submitted amended drawings which depicted dwellings with a smaller floor area. However, as I am determining the appeal under the GPDO provisions that were in force at the time the original application was submitted, it has not been necessary for me to take these into consideration.
4. In the header above, I have used the description of development provided on the appeal form since this more accurately reflects the nature of the proposal within the context of the provisions of the GPDO.

Background and Main Issue

5. Class Q(a) of the GPDO permits development consisting of 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), and under Class Q(b), building operations reasonably necessary to convert the building for that purpose. This is subject to certain criteria, and circumstances where development is not permitted are listed under Paragraph Q.1.
6. At Q.1.(a) the GPDO states 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 (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.
7. The Council's reason for refusal states that insufficient evidence has been provided to demonstrate that an established 'agricultural unit' existed on the prescribed date or that the application building was an 'agricultural building'.
8. Having regard to the above, the main issue in this appeal is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, with particular regard to whether the building was used solely for an agricultural use as part of an established agricultural unit at the relevant date.

Reasons

9. The appeal site is located to the south side of East Hanningfield Road. There is an existing vehicular access from East Hanningfield Road which leads to the appeal building, which is of a scale and design typical of an agricultural building. At the time of my site visit it was empty. Another building which is similar in design is located adjacent to the appeal building. To the rear of the appeal building is a small group of single storey buildings and storage containers arranged around a vehicular access path. The evidence indicates that the site is part of a registered agricultural holding (holding number 13/064/0203).
10. The red line site boundary is drawn tightly around the existing appeal building and includes a small area surrounding its footprint. The location plan includes a blue line which identifies the additional land which is within the holding. This includes the building adjacent to the appeal building and the various single storey buildings to the rear as well as surrounding fields.
11. It is for the appellant to demonstrate that on the relevant date (20 March 2013), the site was used solely for an agricultural use as part of an established agricultural unit, in compliance with Paragraph Q.1(a).
12. The appellant states that the 'agricultural unit' derived its income from the breeding, fattening and sale of cattle. The main parties do not dispute that cattle have been kept and reared on the site as part of the agricultural unit. However, the Council indicate that over the years the land holding and buildings within it have been used for both agricultural and equestrian uses, and that there have been periods of time when cattle have not been present on the site. A significant amount of evidence, including photographic evidence, has been submitted by both parties. This shows that horses have been present on the site a number of times between 2001 and 2014.

13. The appellant agrees that there is evidence of an element of a horse business operating from the unit which was not agricultural and this included the use of feed previously harvested from the land for the feeding of horses and the stabling and breeding of horses within other buildings on the holding. Whilst the appellant has derived some secondary income from horse sales, it is stated that the primary business of the agricultural unit has involved cattle.
14. A planning application¹ was submitted in 2006 for a large building containing loose boxes for the housing of cattle and/or horses. This was refused by the Council and a subsequent appeal² was dismissed. The documents submitted with the application confirm that at the time of submission the applicant had 3 stallions, 25 mares and 10 foals, and that the site was in mixed use for the in-wintering of cattle and/or the housing of pregnant mares.
15. The appellant indicates that as the appeal for the dual use horse and cattle breeding building was dismissed, this building was not built and the cattle business continued without the horse breeding component becoming a significant element of the business. However, in determining the appeal, the Inspector confirmed that on the basis of the current number of animals, it appeared that horse breeding was already a significant part of the appellant's overall business. The appellant's appeal statement also confirmed their agreement that the keeping of horses is not an agricultural use and that the building was designed for the housing of both cattle and horses, a mixed use. It seems to me that, on the basis of the details provided, at that time, the horse-related element was not a small incidental part of the business.
16. The appeal building was erected following the grant of planning permission by planning appeal³ for a general purpose agricultural building. The new building was permitted for the indoor storage of hay, straw, feed materials, fertiliser and machinery. The description of development on the planning permission granted describes the structure as an agricultural building.
17. The appellant completed and returned a Planning Contravention Notice (PCN) in June 2014. The PCN was signed by the appellant and identifies that the appeal building had been used for winter fodder, machinery, storage, feed and stabling for the previous 4-5 years. This indicates that the building was in equestrian use on the relevant date of 20 March 2013. However, the appellant states that this was an unfortunate error in the completion of the PCN due to the appellant's limited familiarity with filling in such forms. It is suggested that the photographic evidence submitted in the Council's statement⁴ identifies that the appeal building was not used for stabling.
18. However, the PCN and identification within it of the equestrian uses within other buildings, suggests that the wider 'agricultural unit' was not solely in use for agriculture at that time and the preceding years including 20 March 2013.
19. Furthermore, a planning application was submitted in 2014⁵ and subsequent appeals⁶ were determined in February 2016 in relation to the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches and

¹ 06/00746/FUL

² APP/W1525/A/06/2020938

³ APP/W1525/A/2104071

⁴ LPA Statement of Case Appendix CCC13 containing photographs dated 22 October 2014, and CCC11 containing photographs dated March 2014

⁵ 14/01041/FUL

⁶ APP/W1525/A/14/2226970 and APP/W1525/C/14/2227120

a breach of planning control related to a residential caravan and associated works to provide a temporary agricultural dwelling for a period of three years. The 2 no. gypsy pitches were within the land that the appellant indicates is part of the established agricultural unit. The Witness Statement of the appellant's daughter submitted with the appeals explained that she and her sister wished to move to one of the plots as it would be easier for them to look after the family's horses if they lived next to their stables and field. She explained that a horsebreeding business is run from the site and that she and her sister both helped with horsebreeding work, and that is how they earned their money. They cleaned the stables and looked after the horses, especially when pregnant and giving birth to foals. Both sisters travelled with their father wherever he went to sell horses.

20. Schedule 2, Part 3, paragraph X of the GPDO sets out that for the purposes of Part 3 permitted development rights, '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. 'Site' is defined as 'the building and any land within its curtilage' and 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture. I consider that to satisfy this definition, the building should be sited within the geographic extent of the agricultural unit.
21. 'Agriculture' is defined in Section 336 of the Town and Country Planning Act 1990 (as amended) and 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 purposes 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.
22. Caselaw⁷ confirms that 'the use of land as grazing land' as an agricultural use may include the use of land for grazing horses. However, 'the breeding and keeping of livestock' as an agricultural use does not include the breeding and keeping of horses, where the 'keeping of horses' involves activities other than putting them out to graze. Consequently, the equine uses at the holding were not an established agricultural use.
23. It is therefore, necessary to assess whether the site subject to the appeal has been used independently from the equine use and, therefore, solely used for an agricultural use as part of an established agricultural unit as required under paragraph Q.1(a).
24. The appellant indicates that the appeal building is not suitable for horses for a variety of reasons including the absence of ventilation and the loose gravel on the floor. The Council's photographic evidence⁸ from March and October 2014 shows the appeal building without equestrian equipment within it, albeit the other nearby buildings were clearly in equestrian use during this period of time, as confirmed by the appellant's daughter's Witness Statement. I am also referred to the Council's site visit notes⁹ which state "Agricultural items,

⁷ Belmont Farm v MHLG [1962] 13 P&CR 417

⁸ LPA Statement of Case Appendices CCC11 and CCC13

⁹ Appellant's Statement of Case Appendix H

- tractors, hay bales (sic) and Cattle sheds were present with no sign of the land being used for any other purpose other than agriculture”.
25. However, the appellant confirms the use of feed previously harvested from the land for the feeding of horses and the stabling and breeding of horses within other buildings on the holding. The design of the building indicates an association to the use of surrounding land through the inclusion of an access door on its south elevation which provides direct access to the land and buildings in the holding which have been in equestrian use. I note that there is no fence or gate to separate the appeal building from the other buildings arranged around the vehicular access path to the rear. This suggests a close relationship between the appeal building and others within the holding. Photographs from 2013¹⁰ show horses on the holding feeding from hay. It is likely that the hay kept on the agricultural unit has been used to feed both cattle and horses.
26. The Statutory Declarations (SDs) submitted with the appeal and signed by people who have had a business relationship with the appellant state that the appellant’s business activities involved the purchase of calves, their fattening and onward sale. The SDs state that the signatories are unaware of the building being used for any other purposes.
27. An SD signed by the appellant also states that his cattle business operated between 2003 and 2017, that the appeal building was used for no other purpose during that time, and that since 2017 it has been left empty and unused. However, the SD’s taken together do not describe a functionally separate building that formed a functionally separate agricultural unit on the site.
28. Based on the evidence before me, taking into account that the evidence shows that the building has been used for the storage of hay, and the presence of the horses have been tended to and bred on the unit, I consider that it is likely that some of the site is not solely in agricultural use. Given the extent of the horse business, which at times required on-site accommodation, it seems to me that this formed a significant element of the unit. Given the clear physical relationship between the appeal building and other buildings to the rear, I find that the appeal building has formed part of the wider unit of the holding and the uses relating to the appeal building and the wider holding are not separate but closely related and are functionally dependent on each other. The holding cannot therefore be considered an established agricultural unit as required under paragraph Q.1.
29. I understand that representatives from the Council have undertaken numerous visits to the appeal site over the years. The appellant suggests that with this level of attention that non-agricultural activity would have been quickly noticed and that it was highly likely that enforcement action would have been taken. However, a lack of enforcement action does not, in itself, mean that non-agricultural equestrian uses have not taken place on the site.
30. Taking all of the above into account, based on the evidence before me, observations during my visit and the balance of probabilities, I am not satisfied that the site was used independently from the adjacent non-agricultural uses on 20 March 2013 or thereafter. It, therefore, follows that I cannot conclude

¹⁰ LPA Statement of Case Appendix CCC10

that the site has been used solely for an agricultural use as part of an established agricultural unit as required by paragraph Q.1(a). I, therefore, must conclude that the change of use would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO and therefore is not development permitted by it.

Other Matters

31. The appellant indicates that he is Romany Gypsy and suggests that there has been a disproportionate level of public interest, and attention from the Council to the agricultural unit. However, the concerns expressed regarding the Council's conduct and the interest of third parties during the processing of the application are outside the remit of this appeal decision.
32. Notwithstanding this, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race. However, for the reasons described above, I find that the site fails to comply with the requirements of the GPDO Schedule 2, Part 3, paragraph Q.1(a).
33. Given my conclusion that the proposal would not be permitted under Schedule 2, Part 3, Class Q.1 of the GPDO, there is no need for me to consider the proposal against the conditions set out in Class Q.2(1) and I dismiss the appeal.

Conclusion

34. I conclude that the proposed development would fall outside the scope of that permitted under Schedule 2, Part 3, Class Q of the GPDO and the appeal should be dismissed.

B Pattison

INSPECTOR