



Appeal Decision

Site visit made on 17 July 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2024

Appeal Ref: APP/Z2505/W/23/3334754

Stone Acre Farm, Sutterton Drove, Amber Hill, Boston PE20 3RS

- 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 Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr J Featherstone against the decision of Boston Borough Council.
 - The application Ref is B/23/0296.
 - The development proposed is described as 'to determine if prior approval is required for a proposed change of use under Schedule 2, Part 3, Class Q of Agricultural Buildings to 1no. smaller dwelling house (Use Class C3) and for building operations necessary for the conversion.'
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr J Featherstone against Boston Borough Council and is the subject of a separate decision.

Preliminary Matters

3. 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 GPDO. Transitional arrangements apply to applications submitted under previous iterations of the Order which was the case in this instance. Therefore, the changes do not affect my consideration of the appeal. Consequently, I have not invited further comments from the main parties. All references to the GPDO in this decision therefore relate to the version that was in force prior to these amendments.
4. The Council issued a decision notice after the 56 days statutory period to determine such applications. As such, by virtue of Paragraph W(11) of the GPDO prior approval is deemed to be granted. However, prior approval is only deemed to be granted if it is in fact permitted development. As such, I have considered whether the scheme before me is in fact permitted development within the limitations of the GPDO.
5. The description of the proposed works, impacts and risks taken from the application form only referred to the drawings that had been submitted. As such, I have used the description of development that was used on both the Council's decision notice and on the appeal form as this more precisely describes what has been applied for.

Background and Main Issues

6. 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 which are listed under Paragraph Q.1.
7. 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 20 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 20 March 2013, for a period of at least 10 years before the date development under Class Q begins.
8. The Council's reason for refusal states that insufficient evidence has been provided to demonstrate that the site was in agricultural use for the purposes of a trade or business within an established agricultural unit.
9. However, during the determination of the appeal the appellant submitted historic images of the appeal site which identified that the building that is the subject of this appeal had been demolished and rebuilt elsewhere on the site. As a result, the Council identified that the building cannot be considered to comply with Q.1(a)(iii) as it would be a building brought into use after 20 March 2013 and has not been used for a period of 10 years before the date of the application. Whilst this did not form part of the reason for refusal, I cannot ignore the evidence before me, and I have no other course of action other than to consider this matter as part of this appeal.
10. The appellant had the opportunity to comment on this matter in their Final Comments and as such I did not consult the parties further on this. Consequently, the main parties would not be prejudiced by this approach, and it would not be procedurally unfair to consider this matter before me.
11. Having regard to the above, the main issue relevant to 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 site was in agricultural use as part of an established agricultural unit and whether the appeal building was a building brought into use after 20 March 2013 and has been used for a period of 10 years before the date of the application.

Reasons

Agricultural Use

12. Paragraph D.1 of the GPDO states that the meaning of 'agricultural land' is land which, before development permitted by this part is carried out, is in use for agriculture and is so used for the purposes of a trade or business and excludes any dwellinghouse or garden. An 'agricultural unit' means agricultural land which is occupied as a unit for the purposes of agriculture, including – (a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupied the unit, or (b) any dwelling on that land occupied by a farmworker.

13. The Council acknowledge that the site has been used for agricultural purposes however, it disputes that the site has been used for the purposes of a trade or business.
14. At my site visit there were no animals on the site, however there were buildings which were capable of being used to house them and the land appeared to have been allowed to go fallow which is a common practice in agriculture.
15. The appellant identified that the appeal site was previously part of the adjacent field to the north which they state was part of a larger agricultural unit and that they bought the site in around 2008. They state that they have their own Department for Environment, Food and Rural Affairs (DEFRA) number for pig holding and that the site has been used to rear pigs, sheep, and chickens, as well as grow crops. Based on the information before me the appellant manages the appeal site for their own purposes and as such, the appeal site is used separately to the neighbouring land.
16. No financial information has been submitted with this appeal. Profit levels are not necessarily conclusive, but the lack of information on this matter does not demonstrate that the site has been used for trade or business. A record of costs, turnover or profit might show a minimum level of management or financial consideration that would be expected for a small trade or business. Whilst there is a DEFRA number for pig holding this does not necessarily mean the site is used for a trade or business. The limited financial information does indicate that this site is used recreationally rather than as a business activity.
17. Although it seems that enforcement action has not been taken by the Council regarding the buildings on the appeal site, this does not mean those buildings are necessarily immune from enforcement action. These buildings do not provide conclusive evidence that the site is used as part of a trade or business. I therefore conclude that the site was not in agricultural use as part of an established agricultural unit.

The Appeal Building

18. The appellant's historic images show that between 2015 and 2019, the building was demolished and rebuilt elsewhere on the site. I saw on my site visit that there was no longer a building in the location shown in the 2015 image. Whilst the appeal building may have used the same materials and look effectively the same as the one it replaced, by moving it, the appellant has constructed a new building. Consequently, based on the information before me, the appeal building was erected in around 2019 and the application made in around August 2023. As such, the building was brought into use after 20 March 2013 and has not been used for a period of 10 years before the date of the application.
19. The appellant has referred to two appeal decisions at Old Woodhall Road¹ and at Grove Farm². In both appeals the Inspectors came to a similar conclusion that if the Council do not notify the applicant within the 56-day period then prior approval is deemed to be granted. Within the appeal decision at Old Woodhall Road the Inspector concluded that, that scheme was permitted development, unlike this appeal, and for the appeal at Grove Farm, that

¹ Appeal Ref: APP/D2510/W/22/3300279

² Appeal Ref: APP/D2510/W/23/3321771

Inspector left it to the appellant to satisfy themselves that the scheme conformed with the limitations of the GPDO.

20. I have followed the approach taken by the Inspector in the Old Woodhall Road decision and concluded on whether this scheme would be permitted development. However, the approach taken at Grove Farm is also reasonable, although if I had taken that approach the appellant would still likely need to seek assurances whether this appeal scheme would be permitted development.
21. Therefore, for the reasons given above, the site was not used solely for an agricultural use as part of an established agricultural unit and thus would not comply with Q.1(a)(i) and the building has not been used for a period of 10 years before the date of the application and would not comply with Q.1(a)(iii). Consequently, the appeal scheme would not be permitted development under Schedule 2, Part 3, Class Q of the GPDO.

Other Matter

22. 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).

Conclusion

23. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR