Planning Inspectorate

Appeal Decision

Site visit made on 10 February 2025

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2025

Appeal Ref: APP/D3640/W/23/3333861
Browells Wood, Windlesham Road, Chobham, GU24 8SN

- 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).
- The appeal is made by Ms Debbie Boon against the decision of Surrey Heath Borough Council.
- The application Ref is 23/0915/GPD.
- The development proposed is a change of use of an agricultural building to a single residential dwelling.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of an agricultural building to a single residential dwelling at Browells Wood, Windlesham Road, Chobham, GU24 8SN in accordance with application 23/0915/GPD including drawing nos 1.001, 1.000 and 1.100.

Preliminary Matters

2. Class Q of Part 3 of the Order refers to a change of use of agricultural buildings to dwellinghouses. These provisions were amended by Article 3 of an Order which came into force on 21 May 2024. However, paragraph (2)(b) of Article 10 of the 2024 Order confirms that the amendments made by Article 3 do not apply to applications for a determination as to prior approval made before 21 May 2025. As the appeal application was submitted in August 2023 it should therefore be considered against the previously permitted development under Class Q which comprises the 2015 Order as amended in 2020.

3. Amongst its various provisions, that version of the Order establishes that 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 on 20 March 2013. It is this matter which is in dispute as the Council claims that it had a mixed agricultural and equine use.

4. The Council has dropped its second reason for refusal relating to reliance on private motor vehicles and a failure to promote sustainable modes of transport.

Main Issue

5. In light of the above, this is whether the site was solely in agricultural use on 20 March 2013.

Reasons

6. The appellant's land is a small holding comprising a mixture of paddocks and woodland. It has been used by her family since 2007 for raising livestock. Planning permission was given in 2011 for a mixed agricultural and equine use including, amongst other things, the erection of a stable/store building. This is the building which is the subject of the prior approval application. An aerial photo from June 2013 shows the stable building and it is therefore more likely than not that it had been built by March 2013.

7. The submitted plans show that the building replaced a smaller animal shelter and contained two stables, together with a tack and feed store, an area for tools and equipment and an animal pen. The case officer report relating to the 2011 application remarked that the change to stabling with the occasional riding of horses represented a shift from horses retained primarily for agriculture to a mixed agricultural and equestrian use.

8. However, the question is what was the actual use of the site in March 2013 rather than what was reported on two years earlier? The granting of planning permission is not conclusive in this respect and neither does what is shown on the approved drawings confirm that the building was used to keep horses as part of a distinct equestrian activity. Given the time that has elapsed since then and the likelihood that this date would not have been considered important at the time, it is unsurprising that clear or documentary evidence in this respect is quite limited.

9. The definition of agriculture at section 336(1) of the Act includes the breeding and keeping of livestock. It has been held that this does not encompass the breeding and keeping of horses, which involves activities other than putting them out to graze. In this respect the appellant advises that older horses are kept on the land (no more than 4 and usually 2) as pets and are not ridden or broken to ride. There are no livery facilities, exercise or schooling areas or jumps typically associated with equestrian uses.

10. The Council refers to the judgment in *Sykes v Secretary of State for the Environment and another* [1981] 1 EGLR 137. This establishes that where horses are wholly or primarily fed by other means so that the grazing is incidental then the land is used for keeping them. This would be outside the definition of agriculture. In this case, the appellant indicates that there is ample opportunity for grazing on the 3.6ha site and that the need for supplemental feeding is negligible. There are two field shelters and the level of grazing exceeds the British Horse Society's recommendations. There is therefore no reason to suppose that horses were not grazing on the land in 2013.

11. Furthermore, the appellant imagines that the stables would have been used to accommodate the reindeer kept at the site at the time. These were more valuable stock than the horses and incidents of theft had been experienced. Whilst there is no definite information to support this, the appellant has first-hand knowledge of the site and how it operated and the account provided is plausible.

12. A pet therapy business has run from the site since at least 2022 but this is not relevant to the use of the site 12 years ago. The appellant refers to an appeal decision at Totnes (Ref: APP/K1128/W/15/3135980) but that case would have been decided on its own facts and evidence.

13. In conclusion, on the balance of probability, the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. On that basis it accords with the relevant provision in the Order.

Other Matters

14. The Parish Council objected to the application on other grounds relating to the specific matters to be considered where prior approval is required.

15. The proposed dwelling is within Flood Zone 1 and the parts of the site within Flood Zones 2 and 3 would not be affected. Planning Practice Guidance (PPG) on *When is Permission Required?* refers to an agricultural building in a location where the local planning authority would not normally grant planning permission for a new dwelling. It indicates that this would not be a sufficient reason for refusing prior approval on the basis that it would be undesirable. The PPG also confirms that the permitted development right does not apply a test in relation to sustainability of location. There is no evidence to suggest that the building is not capable of functioning as a residence without works outside the scope of Class Q. The proposal is therefore acceptable in all these respects.

16. The site is within 5km of the Thames Basin Heaths Special Protection Area where mitigation for any new residential development is necessary. Regulation 75 of the Conservation of Habitats and Species Regulations 2017 stipulates that written notification of approval by the local planning authority under Regulation 77 is required where development, as here, is likely to have a significant effect on a European site. The appellant is prepared to pay the requisite sum towards mitigation but a separate procedure to obtain approval needs to be undertaken and the development cannot lawfully proceed until this has occurred.

Conditions

17. Under paragraph Q.2(3) of the Order development is permitted subject to a condition that it must be completed within 3 years starting from the date of this decision. Paragraph W(12) requires the development to be carried out in accordance with the approved details. Further conditions must be reasonably related to the subject matter of the prior approval.

18. In this regard, provision of charging sockets for electric vehicles is covered by Building Regulations. In any event, neither this nor the provision of cycle storage facilities relate directly to the transport and highways impacts of the development. Noise impacts need to be considered. However, there is no explanation as to why a detailed assessment is required in a rural location to ensure suitable indoor ambient levels. Consequently, no additional conditions are justified.

Conclusion

19. For the reasons given above the appeal should be allowed and prior approval should be granted.

David Smith

INSPECTOR