Planning Inspectorate

Appeal Decision

Site visit made on 25 February 2025

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2025

Appeal Ref: APP/K3605/W/24/3347802
Highway Farm, Horsley Road, Downside, Cobham, Surrey KT11 3JZ

- 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 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Justin Skinner against the decision of Elmbridge Borough Council.
- The application Ref is 2024/0971.
- The development proposed is new barn for agricultural purposes.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Article 3(1) and Class A, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) enables as permitted development the erection, extension or alteration of a building; or any excavation or engineering operations which are reasonably necessary for the purposes of agriculture within that unit, where that unit comprises 5 ha or more. However, to be permitted under Part 6, Class A, the development must accord with limitations and conditions.

3. The Council considers that the proposal is not on agricultural land within an agricultural unit, and that it has not been adequately demonstrated that the building would be designed solely for agricultural purposes.

4. If the appellant wishes to ascertain the lawful use of the appeal site, they should apply for a lawful development certificate under s191 (for an existing use) or s192 (for a proposed use) of the 1990 Act.

5. In light of the above, the main issues are:

    - whether the appeal proposal would constitute permitted development with regards to whether it would be carried out on land that is agricultural land comprised in an agricultural unit within the meaning given at paragraph D.1. (1) of the GPDO; and, if so,

    - whether the proposal would be permitted development with particular regard to the limitations set out in A.1.(d).

Reasons

Whether appeal site is agricultural land and within an agricultural unit

6. For the proposal to be permitted development under Part 6, Class A of the GPDO, the proposed building must be erected on agricultural land located within an agricultural unit. Paragraph D.1 states that, for the purposes of Class A, 'agricultural land' means 'land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business'. This means that there must be an existing agricultural use, and it must be operating as a business before a building can be erected under Part 6.

7. Highway Farm comprises over 5ha. The appellant states that there is another farm known as Indian Farm which they also own and operate. It forms a separate parcel of land a few minutes' drive from Highway Farm. The proposed building would be for the purposes of storing equipment necessary for the running and maintenance of both sites. Although this did not form part of the 'red line' showing the appeal site, a map showing the relative locations of Highway Farm and Indian Farm was provided with the planning application. I accept that it is not necessary for all parcels of land within the holding to be close to form one agricultural unit.

8. Within Highway Farm at the time of my site visit, the area where the proposed building would be located was occupied by wildfowl rearing facilities which are in a dilapidated condition and have clearly not been used for some time. The appellant indicates that the pens have not been formally abandoned, but the pheasant and duck rearing ceased during the Covid-19 pandemic and any return was then deemed unviable following a bird flu outbreak in 2021/22. Although, as the appellant points out, they would not require further planning permission to reinstate the wildfowl rearing element of their business, at the time of my site visit it was not forming part of any farming operation on site. I must necessarily make a judgement on the evidence before me, and this section of the site was not in agricultural use.

9. The remaining land within Highway Farm includes 4 large fields where horses were grazing, and I noted that there are some small shelters within the fields. There is also an area occupied by storage containers, and a separate small solar photovoltaic array. I also visited Indian Farm, which contained extensive grazing, fishing lakes, woodland and stabling for horses.

10. The appellant acknowledges that there is an element of equestrian use within the landholding, but in their view, it is ancillary to the main agricultural use. Whilst the use of land for grazing as an agricultural use may include the use of land for grazing horses, this is not the case where the keeping of horses involves activities other than putting them out to graze.

11. The equestrian facilities, taken together with the storage facilities, fishing lakes and solar photovoltaic array, based on the evidence before me, would indicate that the non-agricultural uses are not merely ancillary uses to a primary agricultural use. The evidence available to me does not clearly demonstrate the operation of an agricultural trade or business as the primary use of the land, whether that is on Highway Farm or over the two sites operated as a single entity. Whilst my observations represent a snapshot in time, there is little else before me to determine that the land in use for agriculture is so used for the purposes of a trade or business currently. I have no detailed business information such as verified

accounts, invoices, tax payments, or any other business or financial records to demonstrate an ongoing agricultural activity.

12. I note that the Council have previously granted planning permission for a farm manager's dwelling located at Highway Farm[1] although I note that this dwelling is located outside of the 'red line' plan for this appeal. Based on the extracts from the officer's report provided, the Council evidently considered the two sites to be operating as a single agricultural unit at that time. However, I note the operation would have been quite different at that time due to the wildfowl rearing being in operation at Highway Farm and supplying the shoot at Indian Farm.

13. My attention has been drawn to other applications for prior approval for agricultural buildings that have been agreed by the Council[2] on nearby farms, where the appellant suggests that the same level of scrutiny has not been applied. These permissions would have been assessed on their merits at the time, and I note that both were decided over 18 years ago. I have no substantive evidence before me regarding any similarities in circumstances between the appeal proposal and these nearby sites, and I am required to make a decision based on the evidence before me.

14. In conclusion therefore, it has not been adequately demonstrated that the appeal site forms agricultural land on an agricultural unit within the meaning given at paragraph D.1. (1) of the GPDO. As such, it does not satisfy the requirements of Schedule 2, Part 6, Class A, Paragraph A of the GPDO and so the proposal is not development permitted by it. For the avoidance of doubt, this conclusion is based on the evidence before me, for the purposes of this prior approval appeal and is without prejudice to any future proceedings.

15. In these circumstances, it is not necessary for me to go on and consider whether the proposal would be permitted development with particular regard to the limitations set out in A.1.(d), namely that the building has been designed for agricultural purposes, as this would have no bearing on the outcome of the appeal.

Conclusion

16. For the reasons set out above, the appeal is dismissed.

L Francis

INSPECTOR

[1] Council's reference 2018/2137
[2] References 2000/1519 and 2006/2742