The Planning Inspectorate

Appeal Decision

Site visit made on 28 March 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 April 2017

Appeal Ref: APP/L3245/W/16/3161344
Agricultural Building on Land at Holyhead Road, Boningale, Albrighton, Shropshire WV7 3AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 L Perrins against the decision of Shropshire Council.
- The application Ref 16/02676/PMBPA, dated 14 June 2016, was refused by notice dated 3 August 2016.
- The development proposed is change of use of agricultural building to a dwellinghouse (Class C3), and for associated operational development.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The submitted forms do not contain a description of development. Nevertheless, it is clear from the supporting information and the form used that the development proposed is a change of use of an agricultural building to that of a dwelling, with associated operational development. I have therefore used that description in the banner heading.

3. Planning Practice Guidance (PPG) advises that the starting point for Class Q is that the permitted development rights grant planning permission, subject to the prior approval requirements. However, it is necessary to determine whether the proposal falls within permitted development. Class Q of the GPDO[1] states that development consisting of Q(a) 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) of the Schedule of the Use Classes Order[2]; and Q(b) building operations reasonably necessary to convert the building, is permitted development.

4. Where development is proposed under Class Q(a) together with Class Q(b), it is permitted subject to the condition under paragraph Q.2 (1) that before beginning the development, an application must be made to the local planning authority for a determination as to whether the prior approval will be required as to (a) transport and highways impacts, (b) noise impacts, (c) contamination,

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015
[2] The Town and Country Planning (Use Classes) Order 1987 (as amended)

(d) flooding, (e) location or siting, and (f) the design or external appearance of the building.

5. The Council refused the application for prior approval as it considered that permitted development rights do not apply as the proposal consisted of building operations which exceeded those reasonably necessary for the building to be converted and function as a dwelling house. The application was also refused due to insufficient information being provided in relation to the requirements of Class Q, particularly in relation to the extent of structural work, floor slab and septic tank required for conversion. It also considered that the building has not been used entirely for agricultural purposes as required by Q.1(a).

6. There is no dispute between the parties that the current proposal for change of use and operational development would otherwise meet the requirements of Schedule 2, Part 3, Class Q, paragraphs Q.1(b)- (h) and (j)-(m) of the GPDO.

Main Issues

7. Taking into account the above, the main issues are:

   - whether the proposal would be permitted development, with regard to whether the requirements of Class Q of the GPDO in terms of paragraph Q.1 (a) and Q.1(i) would be met, and;
   - if so, whether or not prior approval is required and the proposal would be acceptable in relation to the matters sets out in paragraphs Q.2(1)(a) to (f) of the GPDO.

Reasons

Whether the proposal would be permitted development

8. Q.1 (a) is clear that development is not permitted 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'*. Schedule 2, Part 3, paragraph X of the GPDO sets out that an '*established agricultural unit*' for the purpose of Class Q means agricultural land occupied as a unit for the purposes of agriculture, on or before 20 March 2013 or for 10 years before the date the development begins.

9. *'Agriculture'* as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended), amongst other things, includes horticulture, fruit growing, seed growing, the breeding and keeping of livestock and the use of land as grazing land. Schedule 2, Part 3, paragraph X of the GPDO further sets out that for the purposes of Part 3 permitted development rights, *'agricultural building'* means a building (excluding a dwelling house) used for agriculture and which is used for the purposes of a trade or business and *'agricultural use'* refers to such uses.

10. The agricultural building in question comprises a steel framed structure with a shallow pitch roof and an adjoining lean-to steel framed structure. The building is located adjacent to a number of other structures 2 of which are shown to be demolished as part of this proposal. I noted at my site visit that the land edged blue on the location plan includes a stable block with a UPVC

conservatory attached to it and a number of what appeared to be containers for storage. There was also a chicken run and chickens, sheep and ponies on the overall site.

11. At the time of my visit, the appeal building contained a tractor and other related equipment, together with associated items and materials that could reasonably relate to agriculture and the maintenance of agricultural equipment. However, within the lean-to building a limited number of other items not typically associated with agriculture, such as small pony carts/traps, were visible. There was also a large amount of hay stored in the lean-to.

12. The Council have stated that the application form in connection with the 2002 planning application[3] for the building stated that the land formed part of a horse paddock. It has also stated that the 2004 planning application[4] for the stable block stated that 10-12 horses were to be kept on the site at any one time. The appellant contends that the buildings were used for agricultural use on 20 March 2013 and that whilst the site has been used in the past for the breeding of horses this use ceased over 8 years ago. He also states that since then he has run the site together with an additional site as an agricultural unit and that the small number of horses and ponies grazing on his land are kept as pets and the horse grazing can be seen as a de minimus use.

13. The equestrian use of land can be treated as agricultural if the horses are kept for working purposes or if they are simply turned out on land with a view to feeding them from that land i.e. grazing. However, if they are fed additional food or if they are ridden or exercised that is the keeping of horses then the use ceases to be agricultural. There is no indication that the equine use within the appellant's ownership has been for agricultural purposes, despite the presence of some land suitable for grazing. I note that equine use of the site and building may be de minimus but for the purposes of Q.1 (a) the question is whether they were used solely for an agricultural use.

14. The Council contend that the appellant has retired and that the land is used as a 'hobby farm' rather than a trade or business. I have no detailed evidence from the appellant in relation to the agricultural use and as such I have insufficient information before me to ascertain whether the agricultural use of the building is for a trade or business.

15. 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 and building have been used solely for an agricultural use as part of an established agricultural unit as required by paragraph Q.1(a).

16. Furthermore, Article 3 paragraph 5a of the GPDO states that *'The permission granted by Schedule 2 does not apply if- (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful'*. The Council have stated that the main steel framed building has not been constructed in accordance with the approved plans as its overall dimensions are appreciably different to those shown within the 2012 permission.

17. I also note that the Council have no record of planning permission for the lean-to building. The appellant has not disputed this evidence and I have no

[3] Planning application – 02/0282
[4] Planning application – 04/0260

additional information in front of me, such as a Certificate of Lawful Development to suggest that the buildings as constructed are lawful in planning terms. Consequently, taking into account all of the above, I conclude that the proposal would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO and therefore is not development permitted by it.

18. Paragraph Q.1(i) of the GPDO states that development is not permitted by Class Q if the development under Class Q (b) would consist of building operations other than: the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling.

19. The PPG states that the permitted development right under Schedule 2, Part 3, Class Q assumes that the agricultural building is capable of functioning as a dwelling. Nonetheless, it indicates that, for the building to function as a dwelling, some building operations which would affect the external appearance of the building and which would otherwise require planning permission would need to be undertaken and should be permitted. The PPG further clarifies that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Consequently, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for the residential use that the building would be considered to have the permitted development right.

20. The appellant has submitted a structural survey which states that the steel frames remained visually plumb and true and that no removal or replacement of existing structural members is proposed. It concludes that *'the existing building should be structurally strong enough to take the loading which comes with the external works'*.

21. The Council contend that the structural report did not inspect the foundations and that some of the woodwork may not have been inspected. However, the stated limitations in the report are, in my experience, standard limitations of many structural reports on buildings that are used. The steel frame and building appeared to be in a good standard of repair at the time of my site visit and I have no reason to dispute the conclusions of the structural report.

22. The main steel frame building has metal clad walls and a cement fibre roof. There is a large opening within one wall. The internal steel structure is supplemented by timber horizontal battens and purlins and diagonal metal braces in part. The appellant's submission describes how the steel frame, mezzanine floor and wall/roof coverings of the existing building would be retained. New non-load bearing, insulated partitions would be constructed internally behind the cladding and the roof would be insulated. The large opening would be partially filled with cladding and the remainder with glazed doors. I note that the information provided is limited but to my mind, the installation of windows and alterations to the roof and exterior walls as proposed would comply with paragraph Q.1(i).

23. The Council have also expressed concern in relation to the construction of a concrete floor slab in place of the compacted earth surface within the building. I do not consider that this slab would increase the loadings within the building as it would be at ground floor level. I note that the appellant has stated that the concrete floor slab would be merely for insulation. I can see no reason why it would not be possible to have a septic tank in place to deal with foul drainage

matters and even though this may be outside the appeal site this is not an uncommon arrangement in countryside locations.

24. Consequently, based on the evidence before me, the existing building would be structurally strong enough to take the loading that comes with the proposed external works to provide for its residential use. Furthermore, the cumulative works would not constitute rebuilding so as to fall beyond the scope of a conversion permitted under Class Q. Nevertheless, the absence of conflict with Class Q in these respects is not decisive as I have found that the proposal would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO for the reasons given above and therefore is not development permitted by it.

25. In reaching my findings, I have taken account of an appeal decision[5] that the Council has brought to my attention. There are some parallels with the proposal before me but there are appear to be differences in terms of the individual circumstances of the agricultural buildings and the conversion works required. However, the full details of this scheme are not before me and as such I give it limited weight.

26. I also afford little weight to a recent Council decision to grant prior approval for change of use of an agricultural building to a dwelling at Chinnel Farm, Mile Bank, Whitchurch, Shropshire, SY13 4JY as the full details of the scheme are not before me. This appeal is necessarily determined on its own merits relative to the legal tests in the GPDO.

Prior Approval Matters

27. Given my conclusion that the proposal would not be development permitted under Schedule 2, Part 3, Class Q of the GPDO, there is no need for me to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

28. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed under the prior approval provisions set out previously.

29. The appeal is, therefore, dismissed.

D. Boffin

INSPECTOR

[5] APP/L3245/W/16/3147333 – 10 August 2016