



Appeal Decision

Site visit made on 25 October 2022

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 October 2022

Appeal Ref: APP/D1265/W/22/3296668

Orchard Farm, Silly Hill to Kingston Lane - Lane, Kingston, Hazelbury Bryan DT10 2AR

- 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.
 - The appeal is made by Mr N Clare against the decision of Dorset Council.
 - The application Ref P/PAAC/2021/04005, dated 12 October 2021, was refused by notice dated 2 December 2021.
 - The development proposed is change of use and conversion of agricultural building to 1 No. dwelling (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 3, Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015¹ (GPDO) sets out the prior approval process. It states² that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.
3. Class Q of the GPDO permits development consisting of (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) or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use. The appeal relates to development under both Q(a) and Q(b), so that the proposal relates to the change of use to residential as well as associated facilitating works.

¹ SI 2015 No.596

² Paragraph W.(3)

Main Issues

4. The main issues are:

- Whether the proposal would be permitted development (PD) under Schedule 2, Part 3, Class Q³ of the GPDO; and
- If so, whether or not prior approval should be granted in accordance with the condition set out in Paragraph Q.2 (1) of the GPDO.

Reasons

Whether the proposal would be permitted development

5. The proposal is to convert the building into a single storey, 3-bedroomed dwelling, with a floor area comprising that of a "larger dwellinghouse" under Paragraph Q.3 of the GPDO.
6. The deemed permission granted by Class Q is subject to a number of limitations which are listed in Paragraph Q.1. The proposal must meet all of these in order to qualify as permitted development.
7. Development is not permitted under Class Q.1 (a) 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. For the purposes of Schedule 2 Part 3 Class Q, Paragraph X defines an "agricultural building" as a building (excluding a dwellinghouse) used for agriculture *and* (my emphasis) which is so used for the purposes of a trade or business, and "agricultural use" refers to such uses.
9. The building to which the appeal scheme relates comprises two elements. There is an L-shaped timber-walled part, which contains 4 stables and a storeroom, and an attached, higher, steel portal framed metal profile sheeting barn structure. Both sections are covered by metal profile sheeting roofs and contain concrete floors.
10. The building is positioned in the northwest corner of a field/paddock, which is bounded by a mix of trees, hedging and post and rail fencing, and has a field gate access from Silly Hill which acts as a shared secondary access to Orchard Farm.
11. The site planning history confirms that the existing structure was approved as "4 no. stables, tack room and barn" in 2003⁴ and that there have been no subsequent applications in respect of the building.
12. The building was vacant at the time of my site visit, and there were no horses within the paddock. However, having regard to my inspection of the building

³ SI 2018 No.343

⁴ LPA Ref 2/2002/0045

- and the site, I have no reason to doubt that the appeal site has previously been used as stables and for the grazing of horses within the adjacent field. This view is supported by the evidence from the Council Planning Officer site visit in respect of the condition of the buildings in October 2021 and the presence of grazing horses in the paddock at that time.
13. The appellant has confirmed that the stables and tack room have been used for the keeping of horses, which used to compete, but that the appellant no longer competes, and that the horses have now been retired and relocated elsewhere off-site. The appellant also states that the adjoining barn was used for unrelated, agricultural, purposes.
 14. In addition, the appellant asserts that the stabling use of the building has not taken place for least 10 years, and that the building was subsequently used for agricultural storage of hay and farming equipment, before this use was also abandoned.
 15. During my site visit, I saw no apparent obvious evidence of an existing agricultural use taking place on the appeal site or the adjacent land at Orchard Farm. Moreover, third-party representations in response to the planning application and the appeal, from the owner of the adjacent farm to the west of the appeal site, state that the structure was built as horse stables, has only been used as such since then, and has never been used for agriculture. That neighbour also states that the site known as Orchard Farm has never comprised a farm or agricultural holding and comprises a dwelling, garden and paddock which has been used for horses.
 16. There is no requirement for the agricultural trade or business, as referred to in Paragraph X of Class Q, to be of a given scale or size, or to be viable. However, the appellant has not provided any substantive documentary evidence in respect of an agricultural trade or business to which the appeal site related, nor evidence to confirm that any previous agricultural use of the building was anything other than a minimal agricultural element within an overall use of the land for other purposes, or a hobby/small-scale recreational farming use.
 17. Accordingly, having regard to the site planning history, the letter of representation from the neighbour, the appellant's own supporting information, and evidence from the Council and my site visit, I find that there is insufficient evidence before me to enable me to conclude that the appeal site was used solely for an agricultural use as part of an established agricultural unit as required by Class Q.1 (a). As such, having regard to the above, I find that the Council was justified in refusing the prior approval application, having regard to Paragraph W.(3) of the GPDO.
 18. In reaching my decision, I have applied the advice within the Planning Practice Guidance⁵ (PPG) in respect of applications for certificates of lawfulness, which sets out that for applications concerning an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

⁵ Paragraph: 006 Reference ID: 17c-006-20140306

19. In this instance, there is evidence before me to suggest that an agricultural use of the site, as defined by Schedule 2 Part 3 Class Q, was not the sole use of the site on the relevant date. As such, I cannot conclude, on the balance of probabilities, that the site is an established agricultural unit for the purposes of Class Q.1
20. The appellant has drawn my attention to an allowed appeal⁶ in respect of the conversion of an agricultural building into a dwelling under Schedule 2, Part 3, Class Q of the GPDO. In this case, the appeal Inspector concluded that the keeping of horses on the site, including their housing within the building, did not trigger a material change of use to an equestrian or mixed use, noting that the horses were unshod and there was no evidence of equestrian paraphernalia or anything to suggest that the horses were being kept for recreational purposes.
21. I do not disagree with the appellant that in some circumstances the grazing of horses may be considered to fall under agriculture. However, the appeal must be determined within the context of the Class Q definition of an agricultural building. I find that the circumstances of the referred to appeal differ from those of the current appeal, since, in that case, the appeal Inspector had concluded that the appellant had clearly demonstrated the existence of an agricultural trade or business on the site on the relevant date, supported by cogent documentary, photographic and video evidence, and the Council were concerned that the keeping of horses on the site amounted to an intervening change of use from agriculture which would disqualify the building from conversion under Part Q.
22. In the case of the current appeal, for the reasons given above, no such substantive evidence of agricultural use is before me. In any event, each case must be judged on its own merits, and I must determine the appeal on the basis of the particular circumstances of the appeal site and its planning history.

Prior approval

23. Given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be granted, as it would not alter the outcome of the appeal.

Conclusion

24. 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 through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
25. The appeal is, therefore, dismissed

S Leonard

INSPECTOR

⁶ Ref APP/W1145/W/17/3188267