



Appeal Decision

Site visit made on 21 August 2018

by **Kevin Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 October 2018

Appeal Ref: APP/R4408/W/18/3200663

Agricultural Building, Land at Low Mill Farm, Off Fall Head Lane, Silkstone, Barnsley, South Yorkshire S75 4LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 and Mrs R Taylor against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2017/1587, dated 1 December 2017, was refused by notice dated 26 January 2018.
 - The development proposed is change of use from an agricultural building to a dwellinghouse (C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs R Taylor against Barnsley Metropolitan District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application date in the banner above is taken from the appeal form, as the application form was undated. The description of development is taken from the Council's decision notice, as it was not described on the application form. The Council's description encapsulates the change of use sought, and I do not consider there would any injustice arising from my use of this description.

Main Issues

4. The main issues in this case are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), and if so, whether the impacts of the development are such as to require refusal of prior approval under paragraphs Q.2.(1) and W.(3).

Reasons

5. Class Q permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling

- within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order¹ and any building operations reasonably necessary to convert the building.
6. Paragraph Q.1 sets out limitations to the permitted development right under Class Q. Development is not permitted under paragraph Q.1(a) if the site was not solely used for an agricultural use as part of an established agricultural unit either (i) on 20 March 2013, (ii) in the case of a building which was in use before that date, but not 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.
 7. Schedule 2, Part 3, Paragraph X of the GPDO sets out the interpretation of certain terms used within Part 3 of the Order, which includes Class Q. "Agricultural building" is defined as meaning a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, with "agricultural use" stated as referring to such uses. As such, the reference in Q.1(a) requiring the site to have been used solely for an agricultural use would require some substantive evidence of the use being in connection with a trade or business.
 8. The Council's first reason for refusal states that insufficient details were submitted to show that the building was used for agricultural use, for the purposes of a trade or business, either on 20 March 2013, or when it was last in use before that date, thereby not satisfying the requirements of Q.1.(a).
 9. The appeal building is a sizeable structure over two levels. On site, I observed vacant poultry pens at first floor level. Three fish tanks at ground floor level were large structures built in blockwork, with plastic sheeting lining the interiors. It was not clear whether they had been used, or when. The ground floor was otherwise mainly used for storage of a tractor and various building materials, including timber, slates, insulation, doors and scaffolding poles.
 10. The appellants acquired the site in late 2013, and confirm that the extent of use of the building since then has been limited mainly to storage of agricultural vehicles for occasional land maintenance. Reference is also made to the appellants' maintenance of a County Parish Holding number, for continuation of low level and infrequent sheep grazing.
 11. The appellants' evidence includes an email from a former neighbouring resident stating that the former owner reared turkeys for sale for many years, but expresses uncertainty as to the operations carried out outside of the main Christmas period when turkeys were sold, observing only 'various comings and goings.' In relation to fish rearing, the neighbour states that they were aware of the fish tanks, but had no real knowledge of the operation.
 12. The appellants further submit notes of a telephone conversation with the estate agent who negotiated the sale of the property, which state that the uses carried on were not insignificant, and that both the poultry pens and the fish tanks had been used and were still capable of use at the time. This same note also states, however, that the previous owner was known to have ceased operations due to ill health, and that the estate agent's records held nothing of substance on the business operations or whether or not they were profitable. In considering this evidence, I have had regard to the statutory declaration

¹ SI 1987/764 – The Town and Country Planning (Use Classes) Order 1987, as amended.

- made by the appellants' agent attesting to the veracity of the telephone notes and email trails submitted with the appeal.
13. I also note the appellants' reference to the comments of the Council's Contaminated Land Officer (CLO) as contradicting the Council's position, in that they acknowledge potential contamination on farms. I am not persuaded by this argument. The CLO took an understandably cautious approach in the absence of information on contamination accompanying the application, and the several possible sources of contamination listed were based on the rural setting and facilities related to agricultural use which exist. The CLO's comments are specific to the matter of potential contamination, and I do not find that they provide substantive evidence of the carrying on of an agricultural use for the purposes of a trade or business.
 14. The Council refers to an online property listing from 19 April 2013 which describes the barn as 'prepared for fish rearing'. It contends this indicates the barn was not actually used for fish rearing. The Council goes on to express concern with other aspects of the appellants' evidence, stating that it does not demonstrate use for the purposes of a trade or business.
 15. The limited evidence before me points to some form of agricultural use of the building in past years, namely for the keeping of turkeys for sale and/or fish farming, prior to the appellants' purchase of the site, but offers little in respect of the scale or nature of the use or uses which may have been carried on. I do not find the Council's reference to the online property listing to be persuasive, given its wording was for the purposes of securing a land sale, not demonstrating a planning use. However, notwithstanding this, I have no substantive evidence from the appellants to suggest that the activities on site were for the purposes of a trade or business.
 16. For the reasons above, I am not satisfied that sufficient evidence has been submitted to demonstrate that, on the balance of probabilities, the appeal premises was used solely for agricultural use on 20 March 2013 or was part of an established agricultural unit on the relevant date. Therefore, the proposal before me is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, I conclude the proposal is development for which planning permission is required. An application for planning permission would be a matter for the Local Planning Authority to consider in the first instance.
 17. Given my findings above it is not necessary for me to consider the related merits of the prior approval application, against those matters set out in Paragraph Q.2 of Class Q of the GPDO.

Other Matters

18. Low Mill Furnace is a Scheduled Monument located close to the appeal building. I have had due regard to its status as a designated heritage asset of national importance, and to the need, under paragraph 193 of the National Planning Policy Framework (July 2018), when considering the impact of a proposed development on the significance of a designated heritage asset, to give great weight to the asset's conservation. However, as I am dismissing the appeal in respect of the first main issue, there would be no harm arising to the heritage asset or its setting in this case.

Conclusion

19. For the reasons given, I conclude that the appeal should be dismissed.

Kevin Savage

INSPECTOR