



Appeal Decision

Site visit made on 5 April 2018

by **Elaine Gray MA(Hons) MSc IHBC**

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

Decision date: 21 May 2018

Appeal Ref: APP/H0738/W/17/3192447

Iris Gardens, Thorpe Thewles, Stockton-on-Tees TS21 3HY

- 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) Order 1995 (as amended).
 - The appeal is made by Mr Michael Newberry against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 17/2684/PMB, dated 25 October 2017, was refused by notice dated 19 December 2017.
 - The development proposed is described as 'change of use of the existing building'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Practice Guidance (PPG) advises that the starting point for Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO) 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 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 Order¹; and Q(b) building operations reasonably necessary to convert the building, is permitted development.
3. The Council considers that insufficient evidence has been submitted to demonstrate that the last use of the building was as ancillary to any agricultural/horticultural activities and as such, the proposal would not comply with Class Q.1.(a). It also considers that the proposal would not accord with Class Q(b) by reason that insufficient evidence has been submitted to demonstrate that the building alterations would be permitted under paragraph Q.1(i).
4. As operational works are required, I have determined the appeal on the basis that it seeks prior approval under Class Q.(a) and (b).

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Main Issue

5. The main issue is whether the development would be permitted development under the provisions of paragraph Q.1 of Class Q of the GPDO, and whether prior approval should be granted.

Reasons

Permitted development

6. Paragraph 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 on (i) 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.
7. 'Agriculture' as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended) includes, amongst other things, horticulture, fruit growing and seed growing. 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 dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, and 'agricultural use' refers to such uses.
8. The appeal site comprises a detached single storey building and a curtilage associated with that building. The application form states that the building was an agricultural building comprising potting rooms, storage and office facilities on 20th March 2013. In support of their case, the appellant has submitted a body of evidence relating to the operation of an iris growing business, Stockton Irises.
9. I have been provided with a letter, of 5 April 2011, allocating a County Parish Holding number and a Single Business Identifier. The place of business is identified as 'land @ Grindon'. However, no map is provided from this time showing the location of the 'land @ Grindon', and so it is unclear whether this land may definitively be identified as the land that comprises the appeal site. A copy of the email registering the address of the appeal site has been supplied, but this does not confirm the existence of a business at the given address. A letter of 25 July 2013 from a customer of the appellant confirms the supply of irises in 2011. However, the letter does not identify the address of the business that supplied the flowers.
10. I have had regard to the copies of orders for large magnets and post cards relating to the Stockton Irises business, and also the copies of receipts of purchases for a tractor, a chainsaw, plant pots, a polytunnel, and other items. However, none of these documents specify the address of the business to which they relate.
11. Similarly, the payments for irises of 28 July 2011 and 30 July 2011 give no business address, nor do the submitted accounts for Stockton Irises. Whilst these documents point to the existence of such a business, there is a lack of evidence before me that conclusively locates the horticultural business at the appeal site on 20th March 2013. Within their final comments, the appellant refers to a range of business activities, but again there is little documentary evidence linking these activities to the appeal site.

12. My attention has been drawn to a previous appeal decision of 21 November 2014. However, this decision is dated some 20 months after March 2013, and so does not demonstrate that the horticulture business was in operation on the site at that time. I note that the planning officer's site notes relating to a visit on 13 June 2014 describe the site as a paddock and stable building.
13. I have carefully considered all of the evidence. It is for the appellant to prove on the balance of probability that the building was used solely for an agricultural use as part of an established agricultural unit in compliance with Paragraph Q.1(a). I have had regard to the Cambridge appeal decision (ref: APP/W0530/W/15/3065759), which specifies examples of documentary evidence. However, in this case, my concern is the lack of evidence that would convincingly link the business to the appeal site on the relevant date. I therefore conclude that there is insufficient information to demonstrate that the relevant GPDO conditions, limitations and restrictions have been met in respect of the agricultural use of the site.

Building operations

14. 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.
15. Further guidance in respect of this matter is provided within the PPG. The PPG states that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.
16. The appeal building is constructed of brickwork, with render to the front and timber cladding to the area. It also comprises elements of timber framing and straw bale construction, and has a slate roof. A Structural Condition Survey (SCS) and Construction Method Statement (CMS) accompanied the application. The SCS states that 'We have not inspected woodwork or other parts of the structure which are covered, unexposed or inaccessible and we are, therefore, unable to report that any such part of the property is free from defect. An investigation of the foundations has not been carried out.' However, the CMS states that the condition of the building is generally fair.
17. Turning to the more detailed proposals, the CMS reports that the roof is in excellent condition, and requires little work, and that the brickwork walls are in good condition. Timberwork to the gables needs to be removed and the proposed plans show the gables replaced with white rendered walls. Nonetheless, the replacement of exterior walls is permitted under Class Q.
18. However, the phrase 'stabilise structure if required' within the original CMS document is ambiguous. Although the appellant has provided a definition of the word 'stabilise', this does not assist in understanding the full extent of the work that may be required for the proposed conversion. The Council's concerns relate to the lack of inspection of a number of elements at the time of the application, and reference to the possible need for stabilisation.

19. The SCS and the CMS are brief documents, and the lack of detail is indeed a matter of concern. However, despite the Council's caution in this regard, the appellant has not sought to provide any further technical information or details that would help address these matters, despite having the opportunity to do so through the appeal process. The removal of the word 'stabilise' from the document does not suffice in this regard.
20. I therefore conclude that, based on the evidence before me, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q (b).
21. The appellant makes reference to the case *Hibbitt v SSCLG [2016] EWHC 2853*, which established that the extent of work is not decisive. However, as the extent of work in this case is not fully apparent, I am unable to make a full and proper assessment of it against the relevant requirements. I have also been referred to appeal decisions in Cornwall (ref: APP/W1145/W/16/3156231) and Northumberland (ref: APP/P2935/W/16/3157544). However, I do not have the details of these cases, and so I am unable to be certain if they provide direct parallels to the appeal scheme before me. In any event, each case is to be considered on its own merits, and so I can afford little weight to these decisions.
22. The Council also object to the scheme on the grounds that the proposed bay windows to the front elevation would project beyond the line of the wall, thus increasing the external dimensions of the proposed building in comparison to the existing. However, the projecting windows would be a very small addition to the building and, crucially, would sit comfortably within the overhang of the existing roof. Therefore, on balance, I consider that they would be acceptable.

Conditions for prior approval

23. Given my conclusion that the proposal would not be development permitted under Schedule 2, Part 3, Class Q (b) of the GPDO, there is no need for me to consider any prior approval matters.

Other matters

24. I have no doubt that the appellant is committed to the development of the business, as the erection of the glasshouse would indicate. However, I am not convinced that there is a functional need for the permanent presence of an agricultural worker on the site, as would be the case for the care of livestock, for example. A dwelling on site might allow the more productive use of working hours, but this would be a private benefit that can be given little weight in planning terms. Whilst I acknowledge the appellant's commitment to the wildlife protection and landscape enhancement of the site, this has not led me to a different conclusion on the main issue.

Conclusion

25. For the reasons above, I conclude that the proposal is not permitted development, and that the appeal should be dismissed.

Elaine Gray

INSPECTOR