The Planning Inspectorate

Appeal Decision

Site visit made on 22 January 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2020

Appeal Ref: APP/J1915/W/19/3238401
Molewood Hall, High Molewood, Hertford SG14 2PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Michael Edwards against the decision of East Hertfordshire District Council.
- The application Ref 3/19/0245/FUL, dated 30 January 2019, was refused by notice dated 4 April 2019.
- The development proposed is erection of an equipment/workshop and personal office together with change of use of land from woodland to residential curtilage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A building was under construction on the site at the time of my visit. Apart from some apparent differences with the design of the roof, the remainder appeared broadly consistent with the submitted plans. The proposed timber cladding had not been implemented. For the avoidance of doubt, I have considered the appeal on the basis of the submitted plans.

Main Issues

3. The main issues are;

   - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
   - The effect on the openness of the Green Belt;
   - The effect of the development on the character and appearance of the area;
   - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

4. The appeal relates to a large detached dwelling set in generous wooded grounds. There is an existing detached garage/storage building on the site that sits between the main dwelling and the development. This is of a similar scale and appearance to what is proposed. The stated intention is to use the building

for a mixture of storage, including machinery associated with the maintenance of the grounds, and a home office.

5. Policy GBR1 of the East Herts District Plan (EHDP)(2018) states that planning applications in the Green Belt will be considered in line with the provisions of the Framework. Paragraph 145 of the Framework states that the construction of a new building in the Green Belt should be considered inappropriate development unless it meets one of a number of exceptions. The development would not fall into any of the categories listed. While the building would ostensibly be used largely for the storage of maintenance equipment, this does not amount to forestry. Neither is there any evidence to suggest the grounds are used for formal recreational purposes.

6. In any event, the building would not be used exclusively for storage. The office element would also clearly fall outside any of the exceptions, as would the incorporation of any woodland into residential curtilage.

7. As such, the proposal constitutes inappropriate development in the Green Belt. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I shall return to this matter below.

Openness

8. The essential characteristics of Green Belts are their openness and their permanence. One of the stated purposes of the Green Belt is to keep land permanently open. In this case, the development would result in a building where previously none existed. The building is also not insignificant in scale for a residential outbuilding. It has a height of over 6 metres and a footprint of around 94 square metres. This constitutes a relatively large addition to the built form of the site, both in terms of footprint and volume.

9. It is stated that the building would replace an existing storage container on the site. Nevertheless, the appellant accepts that the building is both taller and would have a larger footprint than the container. The outcome would therefore still be a tangible increase in the built form on the site to the detriment of the openness of the Green Belt.

10. The site is well screened by woodland, other buildings and topography. Opportunities to view the building from outside the site are likely to be limited. Any views that are available would be glimpsed in nature and heavily filtered. The building would also be well screened from housing on Cowper Crescent by the main dwelling and existing detached garage. While the change in nature of the site would be clearly discernible to occupants of the dwelling itself, the overall visual impact on openness would not be significant.

11. However, the absence of significant visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. When considered as a whole, the spatial impact of the development means that it would clearly fail to preserve the openness of the Green Belt. This adds to the harm resulting from being inappropriate development in the Green Belt.

Character and appearance

12. The development clearly adds to the existing cluster of buildings and density in this part of the site. Consequently, it does have something of an urbanising impact. However, the grounds are extensive, and the building is well separated from neighbouring properties. In this respect, it does not alter the character or grain of the area, which is one of detached dwellings in large plots. The effect on the character of the wider area would not be significant.

13. The extent of views into the site from outside will differ, with some parts being more visible and prominent than others. However, the siting of this building to the west of the garage and main dwelling means that it is not a particularly intrusive structure from the private views of nearby residents. The building is relatively large for a domestic outbuilding. However, when viewed from beyond the site it is unlikely it would be considered as a separate dwelling or annex. The design and materials of the building would also not be inappropriate in a rural location.

14. Therefore, while the building increases the density of development on the site, this does not rise to the level of an unacceptable impact on character and appearance. Accordingly, there would be no conflict with EHDP policies DES4 and HOU12 which seek to ensure, amongst other things, that development respects the character of an area and that the incorporation of land into residential curtilage would not have an adverse impact on character and appearance. The reason for refusal includes reference to Policy DES3. This relates to loss of landscape features. There is nothing to suggest the development would result in any conflict with this policy.

Other Considerations

15. The appellant argues that the development would be acceptable if not for an existing condition which removes certain permitted development rights. This has been the subject of a separate appeal. The appellant accepts that even without the condition, the building itself would not constitute permitted development. Rather, he contends that without the condition there would be a realistic fallback position. However, as the condition remains in place there is no potential fallback on this basis. As such, I have not given any weight to this argument.

16. The appellant has also argued that he has a fallback position as a result of permitted development rights on other properties that he owns in the estate. In the event the appeal is dismissed, he contends that these would allow the construction of equipment stores that may be more harmful than the development. There are no plans before me to demonstrate how such development could take place. Therefore, it is not possible to conclude with any certainty that the 'fallback' would be any more harmful to the openness of the Green Belt and/or the character of the area than the development.

17. In addition, there is no mechanism before me to extinguish existing permitted development rights. If permission were granted on this basis, there would be nothing to stop further development coming forward in those locations in the future. If this were to happen, then any supposed benefits of the development in this regard would be lost. As a result of the above, I have given only moderate weight to this fallback position.

18. The estate is extensive, and it would be reasonable to assume it requires a large amount of maintenance. I acknowledge that being able to store items necessary for this maintenance would be important to the appellant. However, it is not clear why this could not be achieved in a less harmful way.

19. For example, the permission for the adjacent building described it as a triple garage, equipment store and playroom. This should therefore meet some or all of the requirements outlined in the appellant's statement. While I have noted the comments in relation to the number of private vehicles owned, there is no absolute necessity for these to be parked in the garage. I saw that there was ample space for vehicles to be parked outside without the need to park on the grass. Moreover, the particular requirement for this level of parking relates primarily to the personal circumstances of the appellant and the number of vehicles the household owns, including a private collection of motorcycles. Concerns about security are noted, but parking vehicles outside the home is not an unusual or inherently risky practice.

20. The appellant also states that they have planning permission for a stable elsewhere on the grounds. It is possible that this could provide some opportunities for additional storage space. It is also unclear what the extensive area of roof space is needed for. The items needed to be stored are mainly vehicles or heavy-duty items. There is little to suggest that this space is necessary or useful for the purposes suggested.

21. The appellant's statement also refers to additional security measures, including cameras, that have been put in place in response to concerns over crime. There is nothing to suggest that these would not be effective in providing comfort that existing arrangements for the storing of maintenance and gardening equipment, would not be adequate. The provision of additional security measures may also be a potential option which would negate the need for inappropriate development in the Green Belt. Based on the evidence before me, I consider that the above factors should carry only moderate weight in favour of the proposal.

22. The appellant's desire for a separate office carries very little weight in my view. There is no clear evidence to demonstrate that the operation of the appellant's business, or that of family members, could not take place without the need for a new building. Even if carrying out business within the dwelling causes some level of disturbance to other occupants, I am not persuaded that this should necessarily have a harmful impact on living conditions. In addition, the evidence implies that some working from home may already take place. Thus, there would be no associated benefits in terms of reducing the need to travel.

23. Moreover, this requirement also reflects the very specific personal circumstances and preferences of the appellant. These circumstances may change over time, whereas the building would be permanent. This concern also applies to the apparent need for additional storage over and above what already exists.

24. There would be no enhancement or direct public benefits associated with the development, particularly in terms of the effect on local character. In the context of the appeal as a whole, I find the lack of harm to character and appearance carries only moderate weight in favour of the development.

Other Matters

25. The development would not have any impact on the living conditions of nearby residents. However, a lack of harm in this respect is neutral and weighs neither for nor against the development.

Planning Balance & Conclusion

26. The proposal constitutes inappropriate development in the Green Belt. I have given the harm associated with this substantial weight. There would also be some additional harm through the effect of the development on the openness. As explained above, I have given only moderate or limited weight to the other considerations cited in support of the development. Taken together, these would not clearly outweigh the harm to the Green Belt identified above.

27. Consequently, the very special circumstances needed to justify the development do not exist. The development would therefore be in conflict with EHDP Policy GBR1. For this reason, I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 8 January 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/J1915/W/19/3236746
Thorley Street Paddock, Thorley Street, Bishops Stortford, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr M Pegrum (J Day and Son Ltd / Daystone Fireplaces Ltd) against the decision of East Hertfordshire District Council.
- The application Ref 3/19/0542/FUL, dated 8 March 2019, was refused by notice dated 14 May 2019.
- The development proposed is erection of a 2 storey business unit (587sq m) with associate access, parking (12 spaces) and landscaping.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

    - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework;
    - The effect of the proposal on the openness of the Green Belt;
    - The effect on the character and appearance of the area; and
    - If the appeal development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development in the Green Belt

3. The appeal site is located within the Metropolitan Green Belt. The Framework, in paragraph 143, states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a limited number of exceptions as set out in paragraph 145 of the Framework. One such exception is the limited infilling in villages in paragraph 145 e).

4. The appeal site is a large open paddock located within the village of Thorley Street. The open nature provides a positive contribution to the street scene and open views towards the countryside. The village itself is formed by ribbon of development along Thorley Street. Whilst it is in close proximity to the larger settlement of Bishops Stortford, Thorney Street is a small settlement with limited built development and therefore has verdant and rural characteristics.

5. The Framework and the development plan do not provide a definition of limited infill development. The site is surrounded on two sides by existing development, to the north there is a commercial unit and to the south, beyond an access track is a residential property with allotment gardens to the rear. I accept that the presence of development either side of the appeal site would indicate that the site could be considered infill in a village.

6. Turning to whether this infill could be considered as "limited"; the Oxford English Dictionary defines "limited" as "restricted in size, amount or extent". The appeal site is a large open plot with a frontage to Thorney Street of some 85 metres. As such there is a considerable separation distance between the existing development on either side of the plot. The appeal site is considerably larger than the adjacent plots and as such it does not follow the existing pattern of built development along the street. As such in my judgement, the large frontage and overall size of the appeal site, would go beyond what could reasonably be considered as "limited".

7. The appellant has cited appeals in Stockport[1] and Aspley Guise[2] where the inspector interpreted the definition of infill development. In the first case the inspector found that infilling implied the development of a site that is between existing buildings. In respect of the plot itself, it was between plots of similar sizes and formed part of the wider established built form. My approach to assessment is consistent insofar as the general definition of infill and looking at how the appeal site size relates to the existing pattern of development. However, using my own planning judgement in relation to the facts an observations of this case simply reached a different conclusion.

8. For the Aspley Guise appeal, the infill development constituted small-scale development utilising a vacant plot which should continue to complement the surrounding pattern of development. Whilst in principle this might have some similarities with the case before me, as I have not been provided with the full circumstances of these cases, I cannot be certain that the circumstances are the same.

9. In any event, given the large expansive nature of the appeal site which does not follow the existing pattern of built form it would not appear directly comparable to the conclusions drawn in the cited appeals which are not within East Herts. My findings are based on the observations made during my site visit and the evidence provided as part of this appeal.

10. Accordingly, the proposal would be inappropriate development in the Green Belt as it would not represent limited infilling in a village. It would conflict with Policy GBR1 of the East Herts District Plan 2018 (DP), which seeks amongst other things that development in the Green Belt follows the provisions provided in the Framework.

[1] APP/C4235/W/18/3194600
[2] APP/P0240/W/17/3185864

Openness

11. A fundamental aim of Green Belt Policy, as set out in paragraph 133 of the Framework is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. The construction of a two-storey commercial unit, including new access and hardstanding would result in built development where there is presently none. The overall scale, bulk and footprint of the building, with accompanying development including the parking of cars in the car park would inevitably lead to a loss of openness. This is particularly the case as the site currently has no buildings or other development present on site.

12. Whilst the site is currently screened when viewed from the road, the proposed building and introduction of a new access junction and parking areas would be clearly visible from a number of locations including the adjacent commercial unit. As such the development would lead to a significant loss of Green Belt openness and would conflict with the Green Belt purpose of limiting the encroachment of development into the countryside.

Character and Appearance

13. The appeal proposal would introduce a stark commercial building into an existing expansive plot. The proposed design of the unit including the use of vertical metal cladding would be utilitarian in nature and not in keeping with the surrounding rural nature of the area. The proposal would include a considerable amount of hardstanding for the turning area for vehicles servicing the proposed building, which would appear as an incongruous addition and urbanise this rural location. Whilst the proposals would maintain a degree of screening from public viewpoints with mature vegetation, the appeal proposals would still be visible from Thorley Street and neighbouring properties including the adjacent commercial unit.

14. I note that the submitted landscape and visual impact assessment[3] submitted as part of the application indicates that additional planting would be provided which would aid in the further screening of the proposal. This includes additional planting on the boundary between the appeal site and the adjacent commercial unit, as well as replacement of any planting lost on the boundary with Thorley Street. However, the proposal would still be visible from both Thorley Street and neighbouring properties and would appear as a stark contrast to the existing verdant nature of the plot. Additional planting would not ameliorate the harm that I have found.

15. I note that whilst there is an existing commercial unit adjacent to the appeal site, it is much smaller in scale than the appeal proposal and is set back further from the highway. By comparison the scale and siting of the proposed commercial building with large amounts of hardstanding would appear as an incongruous addition to the street scene and within the wider rural landscape.

16. As such the proposed development would harm the character and appearance of the area. It would be contrary to policy DES4 of the DP, which seeks, amongst other things that new development is of a high-quality design which reflects and promotes local distinctiveness.

[3] Landscape and Visual Impact Assessment prepared by Greenlight environmental consultancy dated 15 February 2019

Other Considerations and the Green Belt balance

17. The scheme would be inappropriate development in the Green Belt as defined by the Framework. Substantial weight has to be attached to any harm to the Green Belt. The proposal results in a reduction in openness and harms the character and appearance of the area, and significant weight must be attached to this.

18. The appellant's business is currently located in Bishops Stortford, and due to factors outside of their control will need to leave this site in the near future. I have had regard to the evidence from Coke Gearing Chartered Surveyors which outlines the difficulties in finding a new site to relocate the business. From the evidence submitted it is clear that the appellant has been looking for an appropriate premise in the area for some time with little success. The relocation of the business to the appeal site could therefore secure the long-term future of a local business, including retaining a local workforce. I note that there have been third party letters of support for the proposal which supports this assertion. The loss of this business would have the potential to impact the local economy, and therefore I attach significant weight to the economic and social benefits of retaining the business and existing workforce within the general locality.

19. By maintaining a local workforce the appellant has stated that this would reduce the need for vehicular commuting, which would provide an environmental benefit. I acknowledge that several third parties have written in support of the proposals, and indicate the relocation to this site would allow them to walk to the new site. However, as I have been provided with no substantive evidence of the existing workforce and the patterns of commuting by the appellant to the current site in comparison to the appeal site, it limits the weight that I can attribute to this.

20. It has been put to me that the provision of modern machinery within the appeal site would provide environmental benefits as they would use less water than those on the current site and would be more energy efficient. I have not been provided with any cogent evidence to prove this would be the case, so can only attach limited weight to this assertion.

21. The appeal site is located within the setting of the Grade II Listed Building known as 'The Blue House'. As such I have had regard to my statutory duties under S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. I find that the proposed development would be well screened from this listed building by the existing commercial premises adjacent to the appeal site and would therefore not harm the setting of the listed building. Consequently, the appeal proposal would have a neutral effect on the significance of the designated heritage asset. I note that the Council raised no concerns in this regard.

22. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

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

S Shapland

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 10 March 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2020

Appeal Ref: APP/J1915/W/19/3243681
The Tractor Store, Elbow Lane Farm, Elbow Lane, Hertford Heath, Herts SG13 7QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Ladkarn Holdings Ltd against the decision of East Hertfordshire District Council.
- The application Ref 3/19/1437/ARPN, dated 8 July 2019, was refused by notice dated 4 September 2019.
- The development proposed is the change of use from Agricultural to Class C3 residential to provide 1 larger dwelling house.

Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for change of use from Agricultural to Class C3 residential to provide 1 larger dwelling house at The Tractor Store, Elbow Lane Farm, Elbow Lane, Hertford Heath, Herts SG13 7QA in accordance with the application Ref 3/19/1437/ARPN made on 8 July 2019 and the details submitted with it.

Main Issue

2. The main issue is whether the proposed change of use constitutes permitted development pursuant to Schedule 2, Part 3, Class Q of the GPDO.

Reasons

3. The appeal site is a building on Elbow Lane Farm, which comprises a mixture of agricultural, residential and equestrian buildings. The building is called the Tractor Store and it is a steel portal framed 'Atcost' style barn, with timber frame and weatherboard exterior and has three entrance bays. There are three separate Land Registry Titles covering the areas around Elbow Lane Farm and the site falls under title number HD413875. It also falls within the agricultural land holding number 18/163/0007. The appellant has stated that the building is used for the storage of tractors and other agricultural machinery, feed and hay storage for cattle and sheep and shelter for lambing, sheering, and worming, some of which I observed on my site visit. The proposed development would convert the existing building into a single dwelling house.

4. The Council has suggested that the building was not in agricultural use on 20 March 2013, and therefore, does not benefit from the change of use

afforded by the GPDO. The Council has stated that the Tractor Store building was not shown as entirely enclosed on planning applications relating to other matters on the wider farm site between 2003 and 2010. However, if these applications did not specifically relate to the Tractor Store, it would not have been necessary to show this structure within any associated plans.

5. The appellant suggests that the building has been in place since 2005, when a steel portal framed 'Atcost' style structure was erected above the former concrete midden walls. As this had been in place as part of the previous animal testing facility on the site. The appellant has provided a photograph, which shows that a building was in place in 2005.

6. The land adjacent to the Tractor Store was subject to a lease for the East Herts Equestrian Centre. However, the Tractor Store was not subject to this lease. The appellant has submitted a letter from the former Equestrian Manager who states that the Tractor Store was not used in association with the adjacent equestrian business and has always been used for agricultural purposes.

7. The appellant has submitted various correspondence from the Council's Revenue and Benefits Team, which indicates that the building has not been included as part of the Business Rates Valuation schedule for the site. Whilst a lack of valuation does not necessarily mean the proposal has been used for agricultural purposes, it would appear that the site has had numerous visits by officers in which the building could have been given a rateable value if this was deemed necessary.

8. The Council has suggested that the design and layout of the Tractor Store would only offer limited turning space for large vehicles and machinery and that the doors are limited in height. Although the appellant has provided a profit and loss account of farm expenses for 2013 and 2014, the Council suggests there are no direct invoices associated with the building or photographic evidence of the building in use. Nevertheless, despite these factors it does not necessarily mean that the store has not been used for agricultural purposes.

9. I have considered the evidence provided by the appellant, and on the balance of probabilities, I consider that the building has been in use for agricultural purposes on 20 March 2013 and has been used continuously for agricultural purposes since that time. The proposal therefore complies with the criteria of Class Q.1. and an assessment of the conditions under Class Q.2 also indicates that the Council is satisfied that matters relating to Transport & Highways; Noise impacts; Contamination risks; Flooding risks; design and external appearance, and whether the siting is not impractical are all acceptable.

10. The proposal otherwise meets all the criteria and conditions of Class Q and Prior Approval should, therefore, be granted for the change of use proposed.

Conditions

11. Section W (13) of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

12. The Council has suggested that there should be a condition requiring the submission of a Bat Survey prior to commencement of the development. However, I have considered the response provided by Hertfordshire Ecology,

which states that the structure is sub-optimal for roosting bats and that the likelihood of bats roosting within this structure is not high enough to warrant a survey. Therefore, I consider that this condition is unnecessary and fails to meet the tests set out in paragraph 55 of the National Planning Policy Framework.

Conclusion

13. For the reasons given above, I conclude that the appeal is allowed.

D Peppitt

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 28 January 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal Ref: APP/J1915/W/19/3242050
Poultry Barn, Monks Green Farm Ltd, Mangrove Lane, Hertford, Herts SG13 8QL

- 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 William Ashley (Monks Green Farm Ltd) against the decision of East Hertfordshire District Council.
- The application Ref 3/19/1936/ARPN, dated 20 September 2019, was refused by notice dated 14 November 2019.
- The development proposed is the change of use of agricultural building to C3 (residential) for 5 dwellings.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr William Ashley (Monks Green Farm Ltd) against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have used the description of development from the Council's decision notice as this is more succinct to describe the proposal.

Background and Main Issues

4. Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (the GPDO) permits the 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 to the Use Classes Order[1]. Class Q(b) of the GPDO permits building operations reasonably necessary to convert the building referred to in (a) above.

5. In this case, the Council contends they do not consider the appeal building to be one which is connected with agriculture. Although the building has previously been used as a poultry rearing barn for chickens, this use ceased in 2012 prior to 20 March 2013. The building is currently vacant and has in the interim period of seven years, whether temporary or permanent in nature been

[1] The Town and Country Planning (Use Classes) Order 1997 (as amended)

used for other uses and not for the purposes of agriculture. Furthermore, notwithstanding the above, the Council does not consider the proposal would meet the cumulative limitations, as set out in the GPDO for larger, smaller dwellings and total floorspace for dwellings. Although not a reason for refusal, the Council also suggests that it would not meet Class Q.1(d) on the number of separate dwellings within an established agricultural unit.

6. Therefore, the main issues are:

- whether the proposed change of use constitutes permitted development pursuant to Class Q.1(a) of the GPDO; and
- whether the cumulative number of separate dwellings and floor space of the existing building or buildings changing use is within the limitations, pursuant to Class Q.1(b), (c) and (d).

Reasons

7. The appeal site is a redundant poultry building constructed of a modern steel frame with block work, insulated metal cladding walls and composite roof panels with concrete flooring. The proposal is for the conversion of the building to residential accommodation consisting of five dwellings.

Whether permitted development under Class Q.1(a)

8. The limitations set out in Class Q.1(a) of the GPDO do not permit development 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.

9. The appeal site building has a historical agricultural use, of which the Council contends was up to 2012 when the use ceased, based on their own planning records and that of other third-party representations. These suggest that the building during this period has been used for other non-agricultural purposes 'other car sales business' and a B8 storage use or other commercial enterprise, be that the whole or part of the building. No detailed evidence has been submitted of historic planning records, but these are referenced in the officer's report and within the planning history section.

10. The GPDO, paragraph W[2] (10)(a), requires that when determining applications, the local planning authority must take into account any representations made to them as a result of any consultation undertaken. Third party representations have been provided as part of this appeal which include a copy of an enforcement notice and other sourced information relating to the site. I acknowledge that this in part, relates to the 'poultry sheds' and not the 'poultry house', the subject of this appeal. There also appears to be some historical personal dispute between the appellant and the third parties, of which is not a planning consideration. Nonetheless, this evidence includes an online listing and photograph of the inside of the appeal building and shows it was used for other purposes during a timeframe of 2012 to 2014, including storage of vehicles and a car sales business.

[2] W.- Procedure for applications for prior approval under Part 3

11. The appellant's design and access statement states *'the building was erected to rear poultry which ceased in later 2013 following notice being given by the supplier in 2012'* it goes on to say *'With the poultry contract drawing to an end, other uses were explored but these were not financially viable, and the size of the barn limited other uses'.* It claims that since then the building has been in use for agricultural storage of mowers, digger and general agricultural equipment.

12. The appellant has provided further evidence, which includes agricultural holding numbers and a letter from their accountant[3] confirming that there are two businesses on the site and both agricultural trading entities. It sets out that Monks Green Farm Ltd was the poultry enterprise and that the businesses at the site have been in existence and operated for over 50 years. The information on the accounts is non-specific to the appeal building, it does not demonstrate that an agricultural use has taken place, only that annual returns have been met and as indicated in the appellants evidence there are many business's at Monks Green Farm. Moreover, the accounts are only one single factor and not decisive as to whether the activities constitute a trade or business[4], that being the agricultural use.

13. A further letter is provided from P.D. Hook (Rearing Ltd), of which is not dated. This advises that a poultry contract was in place with the appellant who reared broiler breeders and lasted over many years with the renewal of an established annual contract.

14. Evidence relating to the enforcement matters at the site is limited. It is not clear when the Council started to investigate these matters and exactly which part of the site or which building this refers to in the absence of further evidence[5]. Whilst the letters indicate that a poultry business was run on the site, within the appeal building, there is no evidence as to over what period of time the building was used for the purposes of agriculture or exactly when this ceased.

15. I saw at the time of my site visit, the building itself was generally empty and although there was some evidence of equipment being stored including machinery and vehicles, it was also evident that it was used for domestic and general storage of items and the continuing agricultural use as described by the appellant was not quantified. Moreover, the evidence before me must demonstrate that the site/building has been solely used for agriculture on the specified dates. If the site, building or land is in a mixed use, meaning that it is put to one or more primary uses, permitted development rights will not apply. As such, taking into account my observations and the evidence received, I am not convinced that the building has not been in continuous agricultural use, or that its last use was for such purposes.

16. The appellant has raised concerns in respect of the Council's handling of the application, be that as it may, it would be a matter for the Council at that time if they required further evidence. However, in the GPDO, paragraph Q.2. clearly sets out what the developer must submit and in paragraph W.(3) advises that an application may be refused, where in the opinion of the local planning authority the developer has provided insufficient information to

[3] Wilson Devenish Chartered Accountants & Business Advisors: Reference MON001/2018.05.03, dated 3 May 2018
[4] South Oxfordshire DC v SSE & East [1987] JPL 868
[5] Email From: Paul Dean: Date sent: Tuesday 22, 2014 10:22 AM

establish if the proposals comply with any conditions, limitations or restrictions specified as being applicable in that class.

17. On the basis of the evidence before me, insufficient evidence has been provided to demonstrate that on the balance of probability the building was solely in agricultural use, Class Q.1(a)(i), (ii) on 20 March 2013 or when it was last in use before this date. I cannot be satisfied that the proposal is permitted development and as such I must find it is not. Therefore, the proposal would not comply with the express terms of permitted development set out in Schedule 2, Part 3, Class Q of the GPDO, particularly paragraphs Q.1.(a).

Whether permitted development under Class Q.1.(b), (c) and (d)

18. The Council maintain even though there are two agricultural holdings on the land these are for the purpose of a rural payment agency. They consider actively and historically there is only one established agricultural unit including the appeal and wider site of Monks Green Farm, regardless of the separation of site management. The appellant disagrees with the Council's assessment that it should be considered that each is its own entity, and there are two separate established farming enterprises for the purposes of the cumulative calculations set out in the limitations of Class Q.1(b), (c) and (d).

19. The GPDO makes reference only to there being an established agricultural unit, but sets out the definition, which means agricultural land which is occupied as a unit for the purposes of agriculture, including: (a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit, or (b) any dwelling on that land occupied by a farmworker.

20. For the purposes of Part 3, Paragraph X of the GPDO only requires that the land is occupied as an agricultural unit at the particular point in time as specified in the relevant Class. The requirement that the agricultural unit be 'established' on a particular date is not a requirement that the unit is established for a given period prior to the date and there is no requirement for the established agricultural unit to be of a particular size. Whilst the purpose of the agricultural holdings certificate would be to ensure that anyone with an agricultural tenancy is notified of a planning application, it is not evidence of the use of land or any buildings as 'agriculture', or whether the land is part of an 'agricultural unit'.

21. It was established in Case Law that an agricultural unit is not the same thing as the planning unit and may comprise more than one planning unit[6]. Neither is it necessary for the occupier to own the agricultural land in order for it to form a unit, however there should be some association/ownership of which the appellant confirms, albeit in different company names. Furthermore, the separation of parcels to other uses within the unit do not discount it from being an 'established agricultural unit'. It is therefore a matter of fact and degree, but from the evidence before me, I consider that there has been a clear association between the two parcels of land, based on the historic activities of the site, and that there were and has been regular sharing of activities of an agricultural use, which would lead me to the conclusion that there is one established agricultural unit for the purposes of Class Q.1.

[6] Fuller v SSE and Dover DC [1987] JPL 854

22. Class Q.1(b)(i)(aa) of the GPDO prevents development under Class Q within an established agricultural unit if the cumulative number of separate larger dwellings developed exceeds 3 or (bb) the cumulative floor space of the existing building or buildings changing use to a larger dwelling or dwelling exceeds 465 square metres (sqm). In the case of smaller dwellings Class Q.1(c)(i)(aa) prevents the cumulative number exceeding 5; or (bb) the floorspace of any one separate smaller dwellings exceeding 100 sqm.

23. The proposed development would include one larger dwelling and in combination to the previous developments[7] at the established agricultural unit would result in a cumulative total of four larger dwellings. The floor space of the proposed larger dwelling would be 453 sqm, by combing this with existing development the cumulative floor space would be 855 sqm. The proposed development would therefore not meet the criterion (aa) or (bb) of Class Q.1(b)(i).

24. The proposals also include four smaller dwellings, these would not individually exceed the number but combined with the previous development for two smaller dwellings[8] would result in a total of six exceeding the limitation of five. However, the floorspace of any one of the separate smaller dwellings would not exceed 100sqm. As such, the proposed development would not meet the criterion of Class Q.1(c)(i)(aa). Furthermore, the cumulative number of separate dwellinghouses (together with any previous development under Class Q) would result in a total of ten dwellings, which again would not meet the criteria set out in Class Q (d)(ii).

25. Notwithstanding, that I have found, based on what has been presented to me, the building was not in agricultural use on either the prescribed date or when last used and fails to demonstrate compliance with Class Q.1(a) of Part 3, Schedule 2 of the GPDO. It would neither comply with the limitations as set out in Class Q.1(b), (c) or (d). As such the proposed development does not constitute permitted development.

Other Matters

26. I understand other developments have been granted prior approval by the Council under Class Q in the area. I have been provided with limited details of them, although there may be some similarities. The appellant suggests that the Council have been inconsistent and made inaccurate assertions, but these do not affect the precise circumstances of the appeal scheme. I have also had regard to an appeal decision which has been brought to my attention[9], but the individual circumstances of that case differ from the proposals before me, whilst it was dismissed for not being permitted development under Class Q.1(a). In any event, the appeal needs to be determined on its individual merits on the basis of the evidence before me.

27. Given my conclusion above, there is no need for me to consider the further prior approval matters of transport and highways, noise, contamination, flood risk, impractical or undesirable location and the design or external appearance, as it would not alter the outcome of the appeal.

[7] 3/15/0236/PR and 3/215/1775/ARPN
[8] 3/18/1905/ARPN
[9] APP/J1915/W/16/31244108

Conclusion

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

K A Taylor

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 28 January 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Costs application in relation to Appeal Ref: APP/J1915/W/19/3242050 Poultry Barn, Monks Green Farm Ltd, Mangrove Lane, Hertford, Herts SG13 8QL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr William Ashley (Monks Green Farm Ltd) for a full award of costs against East Hertfordshire District Council.
- The appeal was against the refusal of the to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of agricultural building to C3 (residential) for 5 dwellings.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The application for a full award of costs is on the basis that the Council have not provided evidence in either their delegated report or appeal statement and only refer to Council records. The applicant suggests that the officer did not respond or acknowledge the e-mails sent, which requested the evidence of the Council's records and as such the officer's reasons for refusal are based solely on opinion and have caused unnecessary expense in the search to provide their own records. Furthermore, the applicant considers that the Council is inconsistent with their approach to determinations of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) Schedule 2, Part 3, Class Q applications (the GPDO).

4. The Council did not explicitly reference the letters submitted by the applicant and whilst they say the contents of the documents is included in the officer's reports, the applicant says that the information was not acknowledged. From the information before me it does not appear that the Council ignored the information but moderated the weight attached to them in light of other conflicting evidence. The details of this are explained in the Council's statements. Whilst, the officers report clearly sets out the planning history of the site, including application references, proposals, decision and dates, it also sets out a description of the site and its surroundings, which has likely been

from their assessment and own judgement following the site visit, of which they are entitled to do so.

5. However, the Council maintain that without such evidence to the contrary the onus is on the applicant to prove beyond all reasonable doubt that the building was in agricultural use at the specified time required by Q1.(a) of the GPDO. The correct test is the balance of probability. Nevertheless, as the decision for the case did not solely turn on this point, I am of the view that the Council's error would have not led to a different conclusion for the appeal scheme. The appeal was inevitable given the disagreement between the main parties regarding whether the proposals constituted permitted development.

6. Whilst the applicant says the Council was of the view that the building and appeal site was part of one established agricultural unit as they had accepted agricultural holding numbers, at the time of the planning application, this is not borne out in the evidence. In the officer reports the Council makes specific reference to Q.1 (b) and (c) of the GPDO and assessed the proposal on the criteria of the GPDO. There is therefore little before me to suggest that the Council misinterpreted the GPDO in terms of the definition of an established agricultural unit.

7. The applicant has also referred to other prior approvals, I have not been provided with any substantive evidence that the Council determined the application in a less than consistent manner than any others, in any event, each application would have been determined on its own individual merits and supported evidence.

8. I appreciate that the applicant has engaged with the Council prior to the determination in the email correspondence (Email Chain 1), it appears to me that it is a response to comments that have been received rather than a request for all Council planning records on the appeal site. The matter of requesting a Freedom of Information (FOI), bears no weight and would be the choice of the applicant if he wished to pursue this option.

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

K A Taylor

INSPECTOR