



Appeal Decision

Site visit made on 1 February 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/V2255/W/21/3276153

Pebble Court Farm, Woodgate Lane, Borden ME9 7QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and 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 Michael Miller against the decision of Swale Borough Council.
 - The application Ref 21/500951/PNQCLA, dated 20 February 2021, was refused by notice dated 30 April 2021.
 - The development proposed is change of use of agricultural building to 1no. dwelling and associated operational development.
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Decision

1. The appeal is dismissed

Preliminary Matters

2. Prior approval is sought in respect of the proposed change of use and conversion of an agricultural building to a dwelling 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).
3. A clear description of the proposed development was not provided in the application form and an amended description of the development proposed was provided in the Council's decision notice and relied upon by the appellant in the appeal form. The amended description includes extensive references to the matters for which prior approval is sought and an incorrect reference to prior notification being made. I have therefore used the amended description in the banner heading above, but I have omitted unnecessary text to provide clarity and conciseness.

Main Issue

4. The main issues are whether the appeal building is in use as an agricultural building and whether the appeal site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or if the appeal building was not in use on that date, when it was last in use.

Reasons

5. The appeal site is a secluded area of land which previously formed part of the same ownership as Pebble Court Farm. It comprises areas of hardstanding and open ground, and two vacant buildings. The appeal building is the smaller of the two buildings and is positioned roughly in the middle of the appeal site, close to its western boundary.

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6. The appeal site and the appeal building are not currently in use for agricultural purposes. The appellant claims that the appeal building was not in agricultural use on 20 March 2013 but was in agricultural use when it was last in use, which was before that date. In this regard, the appellant relies on statements in the Council's officer report relating to a previous application¹ which suggest the appeal building was used for agricultural purposes and formed part of an agricultural holding historically.
7. The appellant accepts that he previously erroneously sought prior approval in respect of a proposed change of use of the appeal building from an office to a dwelling. I have been referred to an excerpt of the officer report relating to the appellant's previous application which states the appeal building 'has a formal agricultural use as detailed in SW/93/0558, although its last use would appear to be domestic storage as shown in a planning statement dated 2006'. I have not been presented with the full details of application reference SW/93/0558, but the main parties' representations confirm that application relates to a certificate of lawfulness concerning the larger building at the appeal site, submitted by a former owner in 1993. I have not been presented with the planning statement dated 2006, which the appellant claims relates to the larger building at the appeal site.
8. The planning statement submitted as part of SW/93/0558 refers to the appeal building as being used for agricultural storage purposes at that time, including for the storage of 'implements and machinery used to tend to the orchard, and other land on the holding i.e. tractors, grass cutters, ladders, fruit boxes etc.' and alludes to it being recently erected as permitted development on account of it being 'reasonable [sic] necessary for the purposes of agriculture'. The officer report for the appellant's previous application states the appeal building is shown as an agricultural building on the site plan of SW/93/0558, albeit with a different shaped footprint. It also states that since 1993 the building may not have been used solely for the purposes of agriculture because historic [undated] estate agent documents describe both the appeal building and the larger building at the appeal site as being in light industrial use.
9. It therefore appears that the main parties agree the appeal building may have been initially erected for the purposes of agriculture and was previously used for agricultural purposes as part of an agricultural unit in 1993, but that the agricultural use and agricultural unit have since ceased to exist. Their dispute revolves around how the appeal building had been used prior to 20 March 2013, and in this regard I have not been presented with any convincing evidence to support the claims made by either party. The Council has submitted an undated photograph relating to a 2005 planning application which appears to show a car parked within the appeal building, but as the appellant notes, this also shows a mechanical excavator in front of the building.
10. As the appellant claims the appeal building was not in agricultural use on 20 March 2013, if the appeal building is an agricultural building, I would need to be reasonably sure that when it was last in use before that date it was used for agricultural purposes as part of an agricultural unit; however, the expanse of time between 2013 and the fairly brief and undetailed descriptions of the appeal building's use in 1993 fail to provide that assurance. Furthermore, I

¹ Council ref: 19/506161/PNOCLA

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would need to be satisfied that the appeal building has not been used for any other purpose since.

11. Based on the limited information before me, on the balance of probability, I am satisfied that the appeal building was used as an agricultural building in 1993. I am not, however, satisfied that the appeal building is currently in use as an agricultural building because it did not appear to be used for, or associated with, any agricultural uses during my site visit and no evidence has been submitted to demonstrate it has been used for any such purposes since 1993. I consider it extremely unlikely that the appeal building was last in use for any purposes in 1993, shortly after it was erected. The main parties refer to it as currently being a disused former agricultural building and subdivided from the residence at Pebble Court Farm.
12. The onus is on the appellant to demonstrate that the proposed development would fall within the scope of the development permitted by Class Q and would accord with all relevant criteria. The statements in the Council's previous officer report are undetailed and rely on limited information. Their purpose was to demonstrate the appeal building did not have a lawful use as an office, as had been erroneously claimed by the appellant at that time. They do not demonstrate the appeal building or the appeal site was used solely for an agricultural use as part of an established agricultural unit when it was last in use prior to 20 March 2013. It has not therefore been demonstrated that the proposal would comply with the description of permitted development set out at Schedule 2, Part 3, Class Q of the GPDO, or otherwise accord with Paragraph Q.1(a) of that Class.

Other Matters

13. The appellant has referred to the Framework, which provides guidance relating to planning decisions. The GPDO, in contrast, is legislation which has already granted planning permission for specific forms of development and compliance with the legislation is a matter of law. If a proposed development does not fall within the scope of development permitted by the GPDO, as is the case in this instance, no consideration can be given to the proposal's compliance with the advice of the Framework. Similarly, no weight can be assigned to any benefits resulting from the proposal, the personal circumstances of the appellant, or any support offered to the proposal by any other members of the public.

Conclusion

14. For the reasons I have set out, the appeal should be dismissed.

L Douglas

INSPECTOR