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## Appeal Decision

Site visit made on 12 September 2016

**by Rachel Walmsley BSc MSc MRTPI**

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

**Decision date: 5<sup>th</sup> October 2016**

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**Appeal Ref: APP/C3430/W/16/3151627**

**Agricultural Building, Crab Lane, Bobbington, Staffordshire DY7 5DX**

- 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 & Mrs P M Cockburn against the decision of South Staffordshire Council.
  - The application Ref 16/00214/AGRRES, dated 18 March 2016, was refused by notice dated 29 April 2016.
  - The development proposed is the change of use of established agricultural building to one residential dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The Council has not cited conflict with policies from the development plan in their refusal notice, associated officer report, or in the course of the appeal. As such I have approached the appeal on this basis.

### Main Issues

3. In its first reason for refusal, the Council considered that the building concerned *cannot not* benefit from permitted development rights; in other words the building has permitted development rights. The Council's evidence before me, however, suggests that the building concerned does not benefit from permitted development rights and a case is made accordingly. On this basis I find it reasonable to surmise that the reference to *cannot not* was a typing error and that the Council considers that the building does not benefit from permitted development rights. It is on this basis that I have decided the appeal.
  4. Planning application 16/00214/AGRRES sought permission for the change of use of *an established agricultural building to one residential dwelling*. There is no dispute that the proposal meets the requirements of Schedule 2, Part 3, paragraphs Q.1(b) to (h) or (j) to (m) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The matter in dispute is whether the proposal would meet the requirements of paragraphs Q.1(a)(i) and Q.1(i)(i) and (ii) of the GPDO.
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5. Therefore, in considering the areas of dispute and the Council's reasons for refusal, the main issues are:

- (i) whether the appeal site has permitted development rights; and if so,
- (ii) whether the change of use would accord with the limitations set out in Schedule 2, Part 3, paragraphs Q.1(a)(i) and Q.1(i)(i) and (ii) of the GPDO and therefore be permitted development.

## **Reasons**

### *Permitted development rights*

- 6. Planning permission was granted in 1997<sup>1</sup> for an agricultural storage building on the appeal site. Condition 2 of this permission restricts the use of the building for the storage of machinery associated with the use of the land as a horticultural nursery.
- 7. I am satisfied that the building on site is that shown on the drawings approved under permission 0066/97. This permission does not include a time limit condition, despite referring to one in the reasons. The appellant confirms that the building was erected in 2000 and therefore, without a time related condition, it is reasonable to conclude that the permission has been implemented in accordance with planning permission 0066/97.
- 8. Article 3(4) of the GPDO states that 'nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed granted under Part 3 of the Act otherwise than by this Order.' Whilst under Section 336 of the Town and Country Planning Act 1990, horticulture is included within the definition of agriculture, condition 2 of the planning permission stipulates the use of the land specifically as a horticultural nursery. In light of this and Article 3(4), therefore, the building does not benefit from permitted development rights.

### *Schedule 2, Part 3, Class Q*

- 9. In light of the above I have found that the building does not benefit from permitted development rights and therefore it is not necessary for me to consider the proposal in light of Schedule 2, Part 3, paragraphs Q.1(a)(i) and Q.1(i)(i) and (ii) of the GPDO or address the other matters raised in this appeal.

## **Conclusion**

- 10. As I have found that the proposed development does not benefit from permitted development rights, the appeal should be dismissed.

*R Walmsley*

INSPECTOR

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<sup>1</sup> Planning application 0066/97