
Appeal Decision

Site visit made on 14 June 2016

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 24 February 2017

Appeal Ref: APP/W1145/W/16/3146084

Little Cott, West Wonford, Milton Damerel, Devon EX22 7DW

- 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 Mr and Mrs MD and SJ Murphy against the decision of Torridge District Council.
 - The application Ref 1/1037/2015/AGMB, dated 6 October 2015, was refused by notice dated 3 December 2015.
 - The development proposed is change of use of agricultural building to 1 No dwelling under Class Q(a) and Q(b).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development proposed in the heading above is taken from the Council's decision notice.

Main Issue

3. This is whether the proposal would be permitted development.

Reasons

4. Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) ("the GPDO") 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) ("Class Q(a) development"). Additionally, Class Q(b) permits building operations which are reasonably necessary to convert the dwelling to a Class C3 use ("Class Q(b) development"). Paragraph Q.1 sets out specific circumstances under which development is not permitted and paragraph Q2 sets out conditions applying variously to Q(a) and Q(b) development. Paragraph X sets out various definitions for the purposes of interpretation of Schedule 2, Part 3 of the GPDO.
 5. The Planning Practice Guidance (PPG) confirms that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling, whilst recognising that in order to function as a dwelling some building operations which would otherwise require permission should be permitted. The PPG also advises that it is not the intention for the permitted development right to include the construction of new structural
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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.

6. The Council refused to grant prior approval on the basis that the building is not in agricultural use as part of a trade or business. Further, that the works proposed would exceed those permitted by the restrictions set out in paragraph Q.1.(i) and would require significant structural works. The Council's evidence refers to a failure to comply with Q.1.(g).
7. I deal with these matters below. I am required to assess whether the proposal would comply with any conditions, restrictions or limitations applicable to development under Class Q. The Council's evidence sets out that the building was last used for agriculture, the proposal would create one unit of development, that there has been no other relevant development, and that the floor area of the buildings to be converted and the size of the curtilage identified meets the appropriate tests. On the basis of the evidence before me I find no reason to disagree with these Council's assessment of these matters.

Whether the building is in agricultural use as part of a trade or business

8. Q.1(a) does not permit development under Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 or, 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. Paragraph X of Schedule 2, Part 3 of the GPDO states that 'agricultural building' means a building used for agriculture and which is so used for the purposes of a trade or business, and 'agricultural use' refers to such uses.
9. The appellants' evidence states that the land and buildings were used for grazing and shearing of sheep and were so used at 20 March 2013. The appellants also state the holding has been farmed since 1998 by the appellants and for some periods in collaboration with a local farmer whose business includes a mixed breeding flock of sheep as well as breeding pedigree cattle. This relationship is described as share farming with each party making a contribution. The resulting animal produce arising from this transaction was shared as a means of paying for the use of the land. A letter from the farmer who grazed sheep on the appellants' land from 1998 until 2014, including use of the buildings during part of this time, confirms that the terms were on a 'grass for meat' basis.
10. The appellants have provided a statutory declaration that the buildings have been in sole agricultural use for the keeping of chickens, pigs and sheep. The barn and land have been used for pigs until September 2015. The barn was last used for chickens in 2014. Sheep have grazed the land from 1998 – 2014. The barns were used for treatments, lambing and shearing with remaining space used as a store for feeds and implements. A letter from an immediate neighbour confirms that the land and barns have been in use for sheep pigs, chickens and ducks since 2005.
11. The site has been used by another farmer for a farming enterprise and that enterprise, on the basis of the evidence, is a trade or business. Further, notwithstanding the appellants own use of the site for farming, the appellants

have taken a form of payment for the use of their land and buildings albeit based on a barter system.

12. Taking these factors into account, based on the evidence before me, I find that the site including the building was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 and for the purposes of a trade or business. Consequently, in relation to this matter I find the buildings would satisfy the requirements of Class Q.

Building operations and works

13. Drawing 6499-01 shows floor plans and elevations of the existing buildings. From the drawings submitted and what I observed during my site visit, the site comprises a number of different buildings, although three are linked. At the rear of the site and parallel to the road is a rectangular building with partial height concrete block walls. Various types of cladding above the block walls include horizontal and vertical profiled metal sheeting and some rough timber cladding. For simplicity, I refer to this as Building A. On the road frontage of the site is a small stone barn (Building B). Between these two buildings is a structure (Building C) which appears to comprise a variety of different types of panels or cladding attached to timber posts or framing. All the buildings have metal sheet roofs.
14. Although shown on the survey drawing as detached from Building A, I noted during my site visit that Building B is linked to both buildings A and C. The south west elevation of Building B is incomplete and comprises various corrugated sheets and timber posts. The roof sheeting is supported by timber posts and beams. The composition of the north east elevation of Building B is unclear from the submitted information and was not fully accessible at the time of my site visit.
15. There is a detached building on the road frontage with walls predominantly of concrete blocks. This is shown on the proposal drawings as being converted for garaging and domestic storage although no details of any proposed works are provided.
16. The appellants submit that the building is most certainly strong enough such that it can take the loading which comes from external works. The appellants assert that the structure supporting the cladding in Building C is similar to that used elsewhere and is capable of supporting new lightweight cladding. No structural survey or detailed assessment of any part of the buildings has been provided. Nor are any calculations regarding the loading associated with proposed new wall and replacement roof structures provided.
17. The lower walls of Building A and the walls of Building B are of permanent construction. It is not evident that Building C has any foundations and the information provided gives no information about how the proposed walls would connect to the ground or floor, nor any detail of the structural characteristics of the timber posts and beams which would be retained. In the absence of a survey or detailed appraisal of the existing buildings, and from my observations, Building C appears to lack permanent external walls and the miscellaneous elements of cladding utilise various timber posts and poles for support. On the basis of the submitted evidence, it is therefore not clear that this element of the building could be converted without new structural elements or indeed that it is capable of conversion.

18. With respect to Building A, I consider the evidence submitted is not sufficient to demonstrate that the existing timber structures above the level of the concrete block walls are sufficient to support the panels and new roofs proposed for the proposed dwelling, notwithstanding that these are stated to be lightweight.
19. Paragraph W(9) of the GPDO states that the local authority may seek additional information in relation to applications for prior approval. Whilst there is no indication that the Council sought such information, Paragraph W(3) of the GPDO makes clear that an application may be refused where the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions.
20. Although the appellants assert there will be no new structural works as a consequence of the proposed development, I find the evidence is not sufficient for me to be satisfied this would be the case. Consequently I do not have sufficient information to conclude that the proposal would be permitted development.
21. With regard to the limitations set out in paragraph Q.1.(g) and whether the proposals shown would exceed the existing building at any given point, having compared the existing and proposal drawings it is not evident that the proposals would result in the roof height of any of the building elements being raised. Whilst there may be some alteration of the existing internal floor to roof heights, I find that on the basis of the submitted plans and drawings, it is not clear that significant changes in floor levels are proposed or that these would be anything other than internal works.

Other matters

22. The Council refused permission because in the absence of an ecological report it was unable to ascertain whether protected species were using the building. The appellants submitted a Bat and Bird Survey with the appeal documentation and as a consequence, the Council confirms this reason for refusal has been overcome. I find no reason to disagree with the Council's conclusion in this regard.
23. I have noted the comments submitted by the appellants regarding the background to the introduction of the permitted development rights for the change of use of agricultural buildings to dwellings. I have also noted the briefing notes supplied. However, these do not alter my conclusions with regard to the main issues in this case.

Conclusion

24. For the reasons given above, I conclude the evidence is insufficient to show the proposals would be permitted development and therefore the appeal is dismissed.

J E Tempest

INSPECTOR