



Appeal Decision

Inquiry Held on 22 to 24 January 2020

Site visit made on 24 January 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2020

Appeal Ref: APP/D2320/W/18/3216021

Orcheton House Farm, Wood Lane, Heskin, Chorley PR7 5PA

- 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, Paragraph Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Richard Prideaux against the decision of Chorley Borough Council.
 - The application Ref 18/00294/P3PAO, dated 19 March 2018, was refused by notice dated 23 May 2018.
 - The development proposed is the change of use of an agricultural building to 2 no. dwellinghouses.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. A description of development is not provided on the planning application form. Accordingly, the description given above has been taken from the appeal form and the Council's decision notice.
3. Schedule 2, Part 3, paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) sets out the prior approval process. It states at paragraph W.(3) that the local planning authority may refuse an application where, in the opinion of the authority:
 - (a) the proposed development does not comply with, or
 - (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.

Main Issues

4. The main issues in this case is whether or not the proposal constitutes permitted development under Schedule 2, Part 3, Class Q of the Order with particular regard to:

- a) whether or not the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013; and
- b) whether or not the development under Class Q(b) would consist of building operations other than:
 - (i) the installation or replacement of:
 - (aa) windows, doors, roofs, or exterior walls, or
 - (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and
 - (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).

Reasons

Use at 20 March 2013

5. Schedule 2, Part 3, Class Q (a) of the Order permits 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 C3¹ (dwellinghouses). Class Q (b) permits the building operations reasonably necessary to convert the building to that use. The Order does not, however, permit such development if the site (the building and its curtilage) was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. This is set out in Schedule 2, Part 3, Q.1. (a)(i) of the Order. It is the Council's case that the development does not comply with this provision.
6. Paragraph X of Schedule 2, Part 3 of the Order informs that "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 that "agricultural use" refers to such uses. It also informs that "established agricultural unit" means agricultural land occupied as a unit for the purposes of agriculture. Accordingly, for the development to benefit from the provisions of Schedule 2, Part 3, Class Q (a) the building and its curtilage must have an agricultural use at present, and it must have been solely used for an agriculture use (as part of a trade or business) as part of an established agricultural unit (i.e. on agricultural land occupied as a unit for the purposes of agriculture) on 20 March 2013.
7. The building subject of the appeal is a purpose built agricultural barn of modern construction. The building was erected following a prior approval application in 2005 for the erection of an agricultural building (Council reference 05/00746/AGR). That application was made under the provisions of the permitted development regime at that time².
8. The building is on a wider site that incorporates a recreational fishing lake, sheep farming, a shop and the appellant's residential accommodation. The shop (which includes a rest area and w.c.) and dwelling form a collection of buildings with two other large barns, together with areas of hard standing and

¹ Of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended)

² The Town and Country Planning (General Permitted Development) Order 1995 (as amended)

- parking. These are identified as buildings B, C, D and E, and area F on the plan on page 242 of the core documents³. There is a public right of way that runs through the site from the site entrance and along the boundary of areas 1, 2, 3 and 4.
9. There is no disagreement between the parties that the building has an agricultural use at present. In view of my conclusions below, I have no reason to disagree with this. There is also no dispute that, on the relevant date in 2013, an agricultural use was taking place on the wider site, with parts of the land outlined in blue on the site location plan⁴ being used for farming, including an orchard and the rearing of sheep and pigs for the production of meat. There was also an allotment on the site and some produce from the allotment and the orchard, together with meat reared on the wider site being sold in the site's shop (building C⁵). Accordingly, it is common ground that the appeal site was located within an established agricultural unit as of 20 March 2013. Again, in view of my conclusions below, I have no reason to disagree with this.
 10. I also concur with the agreed matter, that the wider site (i.e. the land outlined in blue on the site location plan) had two primary uses on 20 March 2013 consisting of agriculture and recreational fishing, as well as associated ancillary uses. Whether these primary uses formed a mixed use is not, however, agreed by the Council or the appellant. Whilst I note the Rule 6 and interested parties' reference to the use of parts of the wider site for the storage and repair of machinery, having regard to the planning and enforcement history relating to that use, I am not persuaded that this formed a use of the site in March 2013. Furthermore, based on the evidence before me I am satisfied that any activity relating to the appellant's hobbies took place in other buildings on the wider site and not within the appeal building itself. As such, this matter is not relevant to the determination of this appeal.
 11. The matter in dispute between the Council and the Appellant is whether the appeal site (the building and its curtilage) were used **solely** for an agricultural use as part of the established agricultural unit. The parties disagree on the extent of the agricultural unit and whether there were other uses that could affect one's conclusion on whether, on the balance of probability, the sole use of the building was for an agricultural use.
 12. With regard to the extent of the agricultural unit, the appellant has indicated on the annotated site plan⁶ (with a pink line boundary) the areas of the wider site that he believes formed the agricultural unit on 20 March 2013. The drawn boundary includes a number of field parcels generally to the west of the appeal building and the appeal building itself. The Council did not dispute that only field parcels 1, 2 and 3 were used for grazing in March 2013. It is the appellant's case that, at that time, the building was only used in association with the agricultural use taking place on those field parcels.
 13. Notwithstanding this, at the Inquiry the appellant confirmed that some activity associated with, and I would suggest essential to, the agricultural use took place outside the agricultural unit as suggested by the appellant. This included, but is not limited to, the farrowing of pigs in building B; possible

³ Within core document 8.3.

⁴ Core document 1.7.

⁵ On the plan on page 242 of the core documents (within CD 8.3).

⁶ Document submitted during the Inquiry, identified as ID 8

- lambling within the lean to of building D; animal feed stored in buildings B and D; the sale of the farm produce in the farm shop (building C); and cleaning of the livestock trailer in area F.
14. Accordingly, as agricultural activity took place outside the appellant's pink line boundary⁷, it is only reasonable to conclude that the agricultural unit, on which **all** of the agricultural use took place, would have included a wider area than that suggested by the appellant. As the majority of these additional agricultural activities took place in and around the main complex of buildings on the wider site (i.e. area F and buildings B, C and D⁸), I can only conclude that in March 2013 the agricultural unit would have at least included this part of the wider site beyond the pink line boundary suggested by the appellant.
15. Whilst I acknowledge that the definition of established agricultural unit refers to it being "agricultural land", there is no question that an agricultural unit can include buildings and their curtilage, as well as field parcels such as areas 1, 2 and 3. Indeed, the appellant himself includes the appeal building and its curtilage within his suggested agricultural unit.
16. Further to this, I agree with the appellant's contention, that an agricultural unit is not the same as a planning unit and that an agricultural unit can exist within a planning unit, but need not include all of the planning unit. Indeed, in this case there were areas of the wider site that, on 20 March 2013, were not used for agriculture. These included the fishing lake and area 4⁹. Accordingly, it is reasonable to conclude that in March 2013 these areas were not part of the established agricultural unit.
17. With regard to the uses occurring within that established agricultural unit, in March 2013 the wider site was used for recreational fishing as well as agriculture. In relation to this other primary use of the wider site, it has been established that building B was used in association with the recreational fishing use on 20 March 2013; this was established in the previous planning appeal relating to that building¹⁰. The shop (building C) was also used for the sale of recreational fishing items and as a rest room and w.c. for visitors fishing on the lake. The appellant also confirmed that building D was used as a workshop and store associated with the recreational fishing use, as well as for domestic/hobby purposes.
18. Having regard to the above, as there were other uses occurring within and around the main complex of buildings, it therefore follows that there were other uses occurring within the agricultural unit. On the basis of the evidence before me, those other uses in and around the main complex of buildings would not have been separable or distinct from the agricultural uses also occurring. Furthermore, simply because those other uses and the agricultural use in and around those buildings was inseparable (or mixed) does not mean that these areas ought not to be included within the agricultural unit, particularly as activities essential to the agricultural use were occurring in this area. Accordingly, as the appeal building was used as part of an established agricultural unit that itself had other uses ongoing within it, not just

⁷ ID 8

⁸ As indicated on the plan on page 242 of the core documents and on ID8.

⁹ Shown on the plan on page 242 of the core documents (within CD 8.3).

¹⁰ Appeal reference APP/D2320/W/16/3160406

agriculture, there is a degree of doubt over whether the sole use of the appeal building and its curtilage was for agriculture in March 2013.

19. Considering this point further, I turn now to the evidence regarding how the appellant put the building to use on 20 March 2013. The evidence before me confirms that, at on the relevant date, the appellant stored a number of items in the building that were associated with the maintenance of woodland and trees. These items included the wood chipper, the traction engine and the wood saw, together with the resultant cut wood. Of the items that were stored in the building at the time, the traction engine and wood saw would have been two of the largest. Whilst the appellant has suggested that these items were only used in association with the agricultural use and the agricultural unit, his evidence has indicated otherwise.
20. The appellant confirms that the farm has 'extensive mature woodland around the boundary and within', and that the maintenance of this 'is an essential part of the many ancillary duties we undertake in running the farm'¹¹. At the Inquiry the appellant confirmed that when he referred to 'the farm' he meant all of the land within the blue line boundary¹². He also made particular reference to the maintenance of trees along the public right of way through the site, which on the relevant date would have included trees along the boundary of area 4. I observed this part of the public right of way on my site visit and saw a number of mature trees within the boundary of area 4. These trees would have been outside the agricultural unit in March 2013. Furthermore, on my site visit I also saw established and mature trees and hedgerows along other boundaries of the wider site that would also have been outside the agricultural unit in March 2013.
21. Whilst I acknowledge that the majority of what is referred to as 'woodland' may have been within areas 1, 2 and 3 (i.e. those areas along the watercourse), the appellant clearly regarded his woodland maintenance activity as including the maintenance of **all** trees throughout his land (what he referred to as the farm), not just trees on land within what would have been the agricultural unit. Accordingly, it is reasonable to conclude that the tree and woodland maintenance activity in March 2013 would have been ancillary to the use of the wider site, including, but not limited to, the agricultural unit.
22. Further to this, the appellant's evidence confirms that the traction engine and wood saw had (and still have) a very particular and single purpose, that is to cut or process wood resulting from the activity of woodland and tree maintenance. The appellant's evidence also confirms that the wood chipper was used to process smaller branches and waste timber also resulting from that activity. It would, therefore, make sense that in March 2013 the appellant used this equipment for the cutting and processing of wood and smaller branches that resulted from the maintenance of **any** tree on the wider site. The appellant has not suggested that he differentiated between wood from trees within the agricultural unit and wood from trees outside the agricultural unit when using the traction engine, wood saw and chipper. I acknowledge that the appellant used particular equipment (not stored within the appeal building) to cut back and manage the smaller trees and bushes that I saw around the fishing lake. However, he does not suggest that any wood or small branches resulting from this activity, or indeed any wood resulting from the

¹¹ Paragraph 6 of page 230 of the core documents (CD 8.2).

¹² Core document 1.7.

maintenance of any trees outside the agricultural unit, would have been cut or processed by another means (i.e. without using the traction engine, wood saw or wood chipper).

23. Indeed, that the tree and woodland maintenance activity was ancillary to the use of the wider site and not just ancillary to an agricultural use is supported by the appellant's evidence of this ancillary activity occurring prior to the appellant himself commencing any farming within the blue line boundary. At the Inquiry the appellant confirmed that the maintenance of trees and woodland is essential for, amongst other matters, the safety of his livestock. However, the wood saw, traction engine and wood chipper were both brought to the site and used in connection with the trees and woodland maintenance activity in 2006 at the time when the appellant's own use of the majority of the wider site was limited to recreational fishing. This was prior to the appellant commencing any sheep and pig farming in 2011, and prior to the planting of the orchard in 2008/2009. It is, therefore, probable that this equipment was brought to the appellant's land with the intention of maintaining the tree and woodland for the purposes of the recreational fishing use, and not for the purposes of serving agricultural uses that would not commence until some years later. Whilst tree and woodland maintenance may well have intensified in and around areas 1, 2 and 3 following the appellant's introduction of the orchard and livestock to these areas, the appellant's evidence confirms that such maintenance was already occurring prior to the appellant's agricultural activities and thereafter continued as an activity across the entirety of the appellant's land, as concluded above.
24. In summary on this first main issue, I conclude that the tree and woodland maintenance activity in March 2013 would have been ancillary to the use of the wider site. As there were two primary uses of the wider site incorporating agriculture and recreational fishing, the tree and woodland maintenance activity would have been ancillary to both of those uses, regardless of whether or not they formed a mixed use at the time. Items were stored within the appeal building on the relevant date that were only connected with a use that was ancillary to the primary uses of the wider site, which included, but was not limited to, agriculture. I acknowledge that there were other items stored within the building¹³, and that there is not sufficient evidence to dispute that these other items were only used in association with the agricultural use and, therefore, the agricultural unit. However, these were not the only items stored in the building at that time. Accordingly, I cannot conclude that, on the balance of probability, the sole use of the building on 20 March 2013 was for agriculture.
25. Having regard to all of the above, there is not sufficient evidence to demonstrate that the building and its curtilage were solely used for an agricultural use on 20 March 2013. Accordingly, the proposed change of use and works necessary to convert the building to a use as a dwellinghouse would not meet the requirements of the Order for it to be considered as permitted development under the provisions of Schedule 2, Part 3, Class Q.
26. That planning permission has never been granted for the use of the subject building in association with the recreational fishery does not alter my conclusions on the evidence; that in March 2012 the building was, on the

¹³ Including the blue tractor, live stock trailer and the irrigation pipes.

balance of probability, used in association with the recreational fishery use as well as the agricultural use.

27. Whilst I acknowledge that the Council had originally been satisfied by the appellant's evidence with regard to there being a sole agriculture use of the building on 20 March 2013, this does not alter my conclusions above.

Structure of the building

28. Schedule 2, Part 3, Class Q (b) of the Order permits building operations reasonably necessary to convert the building to a dwellinghouse. Part Q.1.(i) of the Order has the effect of limiting the extent of the works that are permitted by the Order. It states that development is not permitted if it would consist of building operations other than: (i) the installation or replacement of — (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary for the building to function as a dwellinghouse.
29. The Planning Practice Guidance on 'When is Permission Required' (the PPG) provides further clarification on this matter and informs that 'it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use'¹⁴. It goes on to confirm that 'it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right'.
30. As noted above, the building in question is a modern agricultural building with a steel frame, metal cladding and brick plinth. Internally the building has a concrete floor. The plans submitted propose a number of alterations to the building, including the fitting of an insulated internal timber stud framework incorporating a first floor element.
31. It is the Rule 6 party's case that the works proposed would amount to development of the sort identified in Part Q.1.(i) of the Order and that the works proposed would be anything other than the construction of a new dwelling.
32. The appellant's evidence includes a structural assessment, a building regulations statement and supporting written evidence of the appellant's structural engineer. All of these support the appellant's conclusion that the building is suitable for conversion using the method proposed, that it is compliant with the current design codes and that it is capable of safely accommodating the new internal structure required to form the residential units.
33. The Rule 6 party question the reliability of the structural evidence in that an adequate survey had not been undertaken in order to be certain that the foundations and slab of the building existed in the form indicated in the assessment, particularly as this formed the basis of the assessment.
34. In response to this the appellant confirmed at the Inquiry that he had been present when the foundations and slab of the building were laid and that they were laid as indicated in the structural assessment. The Rule 6 party did not

¹⁴ PPG paragraph 105 - Reference ID 13-105-20150305

suggest that it had viewed the slab and foundations and I am not persuaded that the lack of invoices for the amount of materials needed to construct the slab and foundations to the depth indicated in the assessment is evidence that the slab and foundations are not as indicated in the assessment. Moreover, the appellant was not certain that he has produced in evidence all of the invoices for the materials used in the building.

35. Furthermore, the appellant's structural engineer confirmed that he had inspected the building and that, having regard to the items that had been stored within the building to date, the slab and foundations had been sufficiently proof loaded and there were no signs of stress or failure. He added that, in his opinion, even if the slab were not of the depth indicated on the structural assessment, the building could still be relied upon to support the residential uses and associated works proposed.
36. I acknowledge the Rule 6 party's experience in construction and, as such, his understanding of the works required to achieve the change of use of the building. I also note the Rule 6 party's concerns with regard to the lack of trial holes having been dug to observe the slab and foundations of the building, this having been undertaken on building B to support the proposed change of use of that building to a dwelling¹⁵. However, there is insufficient evidence to indicate that the building is not capable of accommodating the works proposed, contrary to the appellant's case and his structural engineer's conclusions.
37. Furthermore, it was common ground that if works were undertaken to the building that went beyond those specified in the submitted plans and permitted under Class Q, the development would not benefit from the provisions of Class Q and planning permission would be required.
38. If not for my conclusions with regard to the first main issue in this case, based on the evidence before me I conclude that the proposed works to the building would be permitted under Schedule 2, Part 3, Class Q (b) of the Order.

Other Matters

39. Interested parties have raised a number of objections to the development, including matters of highway safety, the location of the development within the Green Belt and the effect of the development on wildlife, the privacy of neighbouring occupiers and the use of the public right of way. Notwithstanding that many of the matters raised are not relevant considerations under the provisions of Schedule 2, Part 3, Class Q (b) of the Order, as I have dismissed the appeal, I have not considered these matters further.

Conclusion

40. I am satisfied that the proposed works to the subject building are reasonably necessary to convert it to a use as a dwellinghouse and that they would otherwise be permitted under Schedule 2, Part 3, Class Q (b) of the Order. However, I am not satisfied that the building and its curtilage were used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 (Q.1 (a)(i) of the Order refers).
41. Development under Class Q is not permitted where one or more of the paragraphs in Q.1 apply. Accordingly, it is of no consequence that the works to

¹⁵ The development subject of the appeal reference APP/D2320/W/16/3160406.

the building are reasonably necessary to convert it to a dwellinghouse given that I have concluded that paragraph Q.1 (a)(i) applies in this case. The proposal would not be permitted development under Class Q and I conclude that the appeal should be dismissed.

J Moss

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Cannock QC	Instructed by Elizabeth Walsh of Chorley Borough Council
------------------	--

He called:

Mr Christopher Smith BA (Hons) MSc (MPlan) MRTPI	Chorley Borough Council
---	-------------------------

FOR THE APPELLANT:

Ms Sarah Reid of Kings Chambers	Instructed by Mrs Susan Jones of The Susan Jones Consultancy
---------------------------------	--

She called:

Mrs Susan Jones BA (Hons) BPL MISOCARP MEWI Affiliate Member of RIBA	The Susan Jones Consultancy
--	-----------------------------

Mr Ian Hale BSc (Hons) MSc CEng MIStructE and Chartered Structural Engineer	Director of S-Mech Limited
---	----------------------------

Mr Richard Prideaux	The Appellant
---------------------	---------------

FOR THE RULE 6 PARTY:

Mr G Clark Dip TP MRTPI

He called:

Mrs F Whaite	Neighbour
Mr K Whaite	Neighbour

INTERESTED PERSONS:

Brian Leach	Local Resident
Jean Leach	Local Resident
Alan Whittaker	Local Councillor

INQUIRY DOCUMENTS

1. Appearance List for the appellant
2. Location Plan relating to application reference 9/98/167
3. Email correspondence dated 10 May 2018
4. Opening statement made on behalf of the appellant
5. List of recipients of Inquiry notification letter
6. Written statement of Alan Whittaker
7. Photograph Bundle from the appellant
8. Appellant's annotated site plan

Documents Submitted following the close of the Inquiry:

1. Closing statement made on behalf of the Council
2. Closing statement made on behalf of the Rule 6 party
3. Closing statement made on behalf of the appellant