



Appeal Decision

Site visit made on 19 February 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Appeal Ref: APP/R1010/W/19/3241610

The Dales, 21 Worksop Road, Whitwell Common, Worksop S80 3EH

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr David Johnson against the decision of Bolsover District Council.
 - The application Ref 19/00247/DETFLEX, dated 7 May 2019, was refused by notice dated 11 June 2019.
 - The development proposed is change of use of agricultural buildings to storage/workshop use.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of an agricultural building to a storage/workshop use at The Dales, 21 Worksop Road, Whitwell Common, Worksop S80 3EH.
2. The approval is granted in accordance with the details submitted pursuant to Article 3(1) and Schedule 2, Part 3 of the GPDO, the limitations and provisions of the GPDO, and subject to the condition that the development must be completed within a period of 3 years of the date of this decision and the attached schedule of additional conditions.

Main Issue

3. The main issue in this appeal is whether the buildings were solely in agricultural use on 3 July 2012 so as to be permitted development under Schedule 2, Part 3, Class R of the GPDO.

Reasons

4. Class R of 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 flexible use which includes Class B8 (storage or distribution). However, there are a number of circumstances where such development is not permitted, which are listed in paragraph R.1. These circumstances include the site having not been used solely for an agricultural use, as part of an established agricultural unit, on 3 July 2012.
5. I note the comments by both parties about the use of land around the buildings and whether or not that forms part of their curtilage. Paragraph R.1 of Class R

relates specifically to buildings, not to any land around them. Therefore, my assessment of whether the proposal constitutes permitted development is related specifically to the buildings and not the wider site, except insofar as an appreciation of the use of the wider site helps to understand the use of the buildings at any particular time.

6. The appeal seeks approval for the conversion of two steel framed buildings which are sited within an area of hardstanding described on the plan as an open storage yard. The site, which fronts onto the A619, is adjacent to a dwellinghouse which is also in the appellant's ownership but has a separate access. The area to the rear and the side of the site, also within the appellant's ownership, includes a stable block and paddock, and is used for equestrian purposes.
7. The appellant has confirmed that the buildings were constructed as agricultural buildings but were subsequently used for vehicle storage. In 2009 an enforcement notice requiring that use to cease was served by the Council and was subsequently upheld on appeal. The Council has confirmed that the enforcement notice was complied with by 5 July 2010, and the appellant says that the buildings then reverted to agricultural use.
8. However aerial images dating from 2013 and 2015 appear to show the storage of vehicles, including HGVs, on site. It seems clear that the site has been used for the storage of vehicles on and off over a considerable period of time. More recently, the appellant has confirmed that the buildings have fallen into disuse and, at the time of my visit, they were used only for the storage of a small number of old vehicles. However, this does not necessarily preclude the buildings having been used for agriculture as part of an agricultural unit in July 2012, which is the test that needs to be met.
9. It is apparent from the evidence provided, that in 2012 the appellant had other business interests but was also involved in an agricultural enterprise on his land. Information provided by an agricultural valuer in support of the appeal provides details of the appellant's farming business in 2012, which involved a grassland enterprise and sheep rearing. The farm holdings consisted of around 16 hectares at Westfield Farm, around 2 hectares at the appeal site and a further 5.7 hectares at Commonsides Farm.
10. The appellant has provided a list of agricultural machinery, equipment and hay, together with invoices, for purchases made between March 2012 and 2016. The agricultural surveyor has confirmed that the type of machinery purchased is consistent with growing and harvesting grass for sale, and I have no reason to doubt this. Furthermore, information from the Rural Payments Agency Single Payment Scheme for the year 2012 shows that a payment was made to the appellant under this scheme. Although this seems to have related to the land farmed at Westfield Farm, from the evidence provided it appears that a larger area was being farmed, and that the appellant's agricultural business was significantly more than the 'hobby farm' suggested by the Council.
11. It is now necessary to consider whether the farming enterprise which was underway in 2012 made use of the appeal buildings or was solely based around the larger areas of the holding at Westfield Farm and Commonsides.
12. The appellant contends that in July 2012, the buildings at the appeal site provided the only agricultural storage available to him. Westfield Farm had

been purchased after the other holdings but had no suitable buildings on the site, and there were no suitable buildings at Commonside Farm either. The Council has confirmed that planning permission was granted for an agricultural storage building at Westfield Farm in September 2011, which, according to their records, appears to have been built by early 2012. However, evidence provided by the appellant, including site photos and details of purchase of a roller shutter door, points to the building not being completed and ready for use until October 2012.

13. The Council suggests that other buildings were available at both Westfield Farm and at Commonside Farm, some of which have subsequently been converted to a dwelling. Aerial photos from 2011 do show other buildings at Westfield Farm, but these appear to be significantly smaller than the building subsequently constructed, and the agricultural surveyor has confirmed that in 2012, the buildings available at Westfield and Commonside Farms were not capable of storing harvested produce. The lack of alternative accommodation at Westfield and Commonside Farms therefore supports the appellant's case that the appeal buildings were being used at the time for storage associated with the agricultural use.
14. From the evidence provided it seems reasonable to conclude that, the appeal buildings were probably in agricultural use as part of the wider operation on 3 July 2012. I acknowledge that this use may have only been for a relatively short period of time, starting sometime after the cessation of the unauthorised vehicle storage use in 2010 and probably ending when the new building at Westfield Farm was completed. The buildings may have been used more recently for storage related to equestrian use.
15. However, the evidence points to the buildings being used in association with the agricultural use in July 2012, and for the purposes of Class R, provided that the building was in agricultural use on that date, any prior or subsequent use is not of concern.
16. I have found that, on the balance of probabilities, the buildings were in sole agricultural use as part of an established agricultural operation on 3 July 2012. The proposal therefore complies paragraph R.1 of Schedule 2, Part 3, Class R of the GPDO, and as such benefits from permitted development rights.
17. Having confirmed that the proposal would be permitted development, it is now necessary to consider matters required to be addressed under prior approval in Paragraph R.3 (1)(b) of the GPDO. These matters are transport and highways; noise impacts; contamination risks and flooding.
18. The highways officer raised no objections subject to a condition relating to visibility splays and the maintenance of existing parking and manoeuvring areas.
19. Noise issues associated with the proposal may occur in relation to vehicles accessing the site and manoeuvring within it, although given the relatively modest scale of the site this is unlikely to be excessive. Given the location of the site close to the A619, already a source of traffic noise, any additional impacts are not likely to be significant. However, the adjacent house, which is within the appellant's ownership, is within close proximity to the site and could be affected by noise and disturbance. Road noise is likely to be less at night and so I agree with the Council's suggestion that in order to reduce any

potential noise disturbance, a condition should be imposed relating to hours of operation.

20. I note that no objections were raised to the proposal by the Council's Environmental Health officer in relation to contamination. The appellant has provided a map showing that the site is within flood zone 1.

Conditions

21. Paragraph R.3 of the GPDO specifies that development under Class R must be completed within a period of 3 years starting with the prior approval date.
22. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity, it is necessary to impose a condition setting out the approved plans.
23. Conditions suggested by the Council relating to visibility splays are necessary in the interests of safety and hours of operation to protect the living conditions of nearby residents.
24. The Council has also suggested a condition to limit the amount of repair and maintenance of equipment, to avoid any noise and disturbance which could occur as a result of this. Although such activities could occur at the site, there is no information provided within the application to suggest that they would, and nothing on which to base an assessment of potential impacts. Furthermore, it is not clear how such a condition could operate or how it would be enforced, and the Council has not suggested any wording. I have therefore not imposed such a condition.

Conclusion

25. For the reasons set out above, I conclude that the proposal constitutes permitted development. The appeal is allowed and prior approval is granted.

R Morgan

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the location plan (01) and site plan (02) which were submitted with the application.
- 2) Machinery shall be operated and deliveries shall be taken at or despatched from the site only between 08.00 – 18.00 hours on Monday to Saturday and not at any time on Sundays or on Bank or Public Holidays.
- 3) Full details of the access between the site and the highway shall be submitted to and approved in writing by the local planning authority; and the change of use hereby approved shall not take place until the access has been constructed in accordance with the approved details. The access, parking and manoeuvring areas shall thereafter be retained.