



Appeal Decision

Site visit made on 14 October 2020

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2020

Appeal Ref: APP/U1105/W/20/3255904

Barn at Rull Lane, Rull Lane, Whimble, Devon EX5 3DE

- 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 Karl Mooney against the decision of East Devon District Council.
 - The application Ref 19/2828/PDQ, dated 18 December 2019, was refused by notice dated 31 January 2020.
 - The development proposed is described as '*prior approval for proposed change of use of agricultural building to 1 no. smaller dwelling house (class C3 use) under class Q(a)*'.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (Order) for the change of use of agricultural building to 1 no. smaller dwelling house (class C3 use) at Barn at Rull Lane, Rull Lane, Whimble, Devon EX5 3DE in accordance with the terms of the application Ref 19/2828/PDQ, dated 18 December 2019. The approval is subject to the condition that development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2(3) of the Order.

Procedural Matters

2. I have referred to the description of development within my decision only insofar as it relates to the development proposed.

Main Issue

3. The main issue is whether or not the proposal would constitute permitted development having regard to Schedule 2, Part 3, Class Q(a) of the Order.

Reasons

4. The site comprises a building and its curtilage. Schedule 2, Part 3, Class Q of the Order permits development consisting of (a) 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 C3 (dwellinghouses) of the Schedule to the Use Classes Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
5. Paragraph Q.1 (a) of the Order states that development is not permitted by Class Q if— (a) the site was not used solely for an agricultural use as part of an established agricultural unit— (i) on 20th March 2013, or (ii) 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, or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins. The appellant asserts that the building was in use in 2013, and last in use, for agriculture. This is consistent with the form and likely age of the building and the remnant agricultural machinery within it.
6. The proposal seeks the change of use of the building with respect to Class Q(a) only. The Council contests the validity of this approach because of the clear likelihood that operational development would be necessary to convert the building to enable the change of use. However, there is nothing in the Order¹ that explicitly precludes prior approval applications being made for change of use only under Class Q(a) in these circumstances. Moreover, whilst applications cannot be made under Class Q for building operations alone, any building operations reasonably necessary to convert the building could feasibly be captured within a subsequent application for change of use and building operations under Class Q(b), or indeed an application for planning permission.
 7. Consequently, notwithstanding the content of the Council's reasons for refusal, any appraisal of building operations reasonably necessary to convert the building, and whether or not such works would fall within the scope of a conversion², are beyond my remit in this case as they are simply not proposed. In the same vein, the scheme would comply with the requirements of Paragraph W.(2)(a) of the Order as what is proposed has been fully described.
 8. It is not disputed by the main parties that the scheme would meet the requirements of Part 3, Class Q.1 (b)-(h) and (j)-(m) and, I have no reason to reach a contrary view. Regarding the conditions within Q.2, and matters raised by interested parties, the site would be served by an existing access and private way. Impacts upon transport and highway safety are likely to be slightly smaller than the established use, if one substitutes larger agricultural vehicles for those of a domestic scale. Although the dwellings at Rull Farm are relatively close by, the intervening greenery and distance would prevent any unacceptable noise or overlooking.
 9. There is no evidence of contamination risks on the site. Whilst a third party has raised concern with regard to the capacity of a nearby drain, there is no operational development proposed and therefore no indication of any likely increase in flood risk on the site or elsewhere. There is nothing in the evidence to suggest that the location or siting of the building makes it otherwise impractical or undesirable for it to change from agricultural use to a use falling within Class C3. Further to that, there is no substantive evidence that the scheme would harm biodiversity.
 10. Reference has been made to the application of Class Q within a 2015 appeal decision at a site in Bedfordshire³. However, that decision was made prior to the amendments to the drafting of Class Q in 2018. Its interpretation of Class Q is therefore of limited influence in my assessment.
 11. For these reasons, I conclude that the proposal would constitute permitted development having regard to Schedule 2, Part 3, Class Q(a) of the Order.

¹ Nor the Planning Practice Guidance (PPG) or the Exploratory Memorandum to the 2018 amendments to the Order

² Having regard to PPG Paragraph: 105 Reference ID: 13-105-20180615 and the judgment handed down in *Hibbitt and another v Secretary of State for Communities and Local Government* (1) and *Rushcliffe Borough Council* (2) [2016] EWHC 2853 (Admin).

³ Appeal Ref: APP/P0240/W/15/3006512

Other Matters

12. The site is within influence of the Exe Estuary and the East Devon Pebblebed Heaths Special Protection Areas (the European Sites). The Council considers that, in combination with other projects, the proposal would likely lead to significant adverse effects on the SPAs through increased recreation. I have no reason to disagree with this conclusion.
13. However, Article 3(1) of the Order grants planning permission for the classes of development described as Permitted Development in Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. This effectively imposes a condition on any permission granted by the Order that is likely to have a significant effect on a European Site that development must not commence until a developer has received written notification of the approval of the Local Planning Authority under Regulation 77. The Regulation 77 application may be submitted and approved after prior approval is given. I have not therefore considered this matter further.

Conditions and Conclusion

14. Section W (13) of the Order states that Local Planning Authorities may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. In this case, I have added reference to the standard condition set out in paragraph Q.2(3) relating to timescales.
15. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be allowed.

Matthew Jones

INSPECTOR