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# Appeal Decision

Site Visit made on 29 June 2021

**by Martin Allen BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 September 2021**

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**Appeal Ref: APP/W0340/W/21/3268312**

**Limberlost Farm, Crookham Common, Thatcham RG19 8DH**

- 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 'GPDO').
  - The appeal is made by Mr John Thorogood against the decision of West Berkshire District Council.
  - The application Ref 20/01676/PACOU, dated 27 July 2020, was refused by notice dated 21 October 2020.
  - The development proposed is described as "Application to determine whether prior approval is required for a proposed change of use of Nissen hut from agricultural to a dwellinghouse (Class C3), under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)".
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr John Thorogood against West Berkshire District Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The Council's decision notice refers only to concern over the agricultural use of the building, it does not reference the other main issue I identify below, i.e., the matter of curtilage. However, the appellant has been given the opportunity to comment on this issue and as such there would be no unfairness in me considering the matter in my decision.
4. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). Comments were sought from the Council and the Appellant. As the main parties have had the opportunity to provide comments no injustice has been caused. I have considered the appeal on the basis of the revised Framework.

## Main Issue

5. The main issue in this case is whether the appeal building would qualify for change of use to a dwelling under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, with particular regard to (i) the size of the proposed curtilage, and (ii) the use of the building.

## Reasons

### Background

6. Class Q 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). Paragraph X, Interpretation of Part 3, sets out that curtilage means only -
  - a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
  - b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.
7. In addition, the deemed permission granted by Class Q is subject to a number of limitations which are listed in Paragraph Q.1. The proposal must meet all of these in order to qualify as permitted development. This includes Paragraph Q.1(a) which stipulates that the site must have been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 ('the relevant date'). Paragraph X defines 'agricultural building' to mean a building used for agriculture and which is so used for the purposes of a trade or business.

### Assessment

#### *Size of curtilage*

8. The appeal scheme proposes the conversion of the existing building and an associated curtilage to a residential use. The appellants statement of case sets out that the floorspace within the existing building extends to 45m<sup>2</sup> and the proposed dwelling would sit within a plot of approximately 950m<sup>2</sup>.
9. Having regard to the definition as set out in paragraph X, to which I have referred to above, the proposed curtilage can be no more than either the piece of land beside or around the building, or an area beside or around the building but no larger than the land occupied by the building, whichever is the lesser (emphasis added).
10. Given that it has been stated that the building extends to 45m<sup>2</sup>, the proposed curtilage cannot extend to any extent over this. Clearly, the proposed enclosed curtilage, which in this case includes a paved terrace and garden area, extends beyond this limitation.
11. Consequently, the proposal fails to accord with the provisions as set out in Class Q and cannot be permitted development.

#### *Use of building*

12. The appeal relates to a Nissen-type building, located near to a number of similar structures. The Council contend that it has not been demonstrated that the scheme complies with paragraph Q.1(a) i.e., that the building is in agricultural use.
13. The appellant asserts that the building has previously been utilised for the housing of chickens and egg production. In support of this, the application is accompanied by affidavits from the appellant and others who attest to personal

knowledge of the use the building was put to. These variously confirm that chickens were housed in the appeal building, confirmed by the appellants personal knowledge, as well as by individuals who assisted in the collection of eggs, during the periods of 1967-68 and 1972-76. There is also testimony that other agricultural operations took place at the site, in addition to housing of chickens. In conjunction with this information the appellant has submitted a copy of business accounts from 1972, confirmed as farm trading accounts. These include details cited as "Eggs, Poultry and Rearing Contract". On the basis of this information, I am satisfied that agricultural activities, as part of a trade or business, were taking place at the appeal building until at least the early 1970's.

14. There is little evidence following this time, other than comments that the building has been used only for agricultural storage, with the storage of any other items being only de minimis. It is also stated in a letter that the writer, during the period 1990-2001, saw the building being used for nothing other than agricultural purposes. In any event, there is no positive evidence before me that demonstrates that the buildings' use has been the subject of any activity that would have resulted in a material change of use, away from agriculture.
15. Accordingly, on balance, the weight of the evidence demonstrates that the site was used for agricultural purposes, and no material change of use has occurred to cease this. Thus, the agricultural use of the building remains and was present on the relevant date. Thus, the proposal would accord with the relevant requirement in this respect.

### **Other Matters**

16. I note concerns have been raised over the legality of access points along a nearby private road. However, this is not a matter which is relevant to the consideration of whether the appeal scheme would be permitted development. As such, this has little bearing on the outcome of the appeal.

### **Conclusion**

17. For the above reasons, I conclude that while an agricultural use continues to subsist, the proposal would not comply with the relevant requirement in respect of the curtilage. Therefore, the proposal does not accord with the requirements of Class Q of the GPDO, is not permitted development, and that the appeal should be dismissed.

*Martin Allen*

INSPECTOR