



Appeal Decision

Site visit made on 1 February 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/E2001/W/21/3279089

Land south of Field Lane Cottage, Field Lane, Gowdell DN14 0AS

- 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 appeal is made by Mr Harry Humphrey against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/03741/AGRNOT, dated 11 November 2020, was refused by notice dated 18 January 2021.
 - The development proposed is change of use of existing agricultural building to 1No. dwellinghouse located on farm land approximately 84m to the south of Field Lane Cottage and 25m to the east of Field Lane. Windows and patio doors are to be provided in all habitable rooms.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Schedule 2, Part 3, Class Q 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) of the Schedule to the Use Classes Order and any building operations reasonably necessary to convert the building.
3. The prior approval procedure for all Classes under Part 3 is provided at paragraph W of the GPDO. Under paragraph W (11) development must not begin before the occurrence of one of the following: the local planning authority has notified the applicant that prior approval is not required; or, where it is required, giving written notice of their prior approval; or the expiry of 56 days without the local planning authority notifying the applicant as to whether prior approval is given or refused. Development will not benefit from permitted development rights if those conditions are not met, and work is commenced before such confirmation has been given or time period has elapsed.
4. The Council's view is that the concrete slab floor was installed to facilitate the conversion of the building for residential purposes, and as this was done prior to the application being submitted, the proposal would conflict with paragraph W (11) of the GPDO.

5. The main issue is therefore whether the proposal would be permitted development, having regard to whether the requirements of paragraph W (11) of the GPDO have been met.

Reasons

6. The appeal property is a steel framed agricultural building with the walls formed from concrete blockwork at the lower level with timber boarding above to eaves level. The building has a corrugated sheet roof and a concrete slab floor. The entrance to the building is on its north elevation which has a blockwork wall part of the way up on its western side.
7. The main parties are in agreement that the concrete slab floor was installed prior to this current application being submitted. What is in dispute is whether its installation constitutes the implementation of the development proposed.
8. In total there have been seven applications at the site since 2016 for change of use to a dwelling.
9. Prior approval under Class Q (a) of Part 3 of the GPDO was allowed on appeal¹ in February 2018. The application submitted for the detailed proposal, i.e. operational or physical development, was refused by the Council in August 2018. Based on the available evidence, the Inspector for the ensuing appeal² (the 2019 appeal) had considerable doubt as to whether the existing building would be capable of taking the loading associated with the proposed works. Consequently, the appeal was dismissed³.
10. The structural report⁴ prepared to support the 2019 appeal proposal noted that the existing floor within the building is earth, and to utilise the barn as a dwelling a new insulated concrete ground floor slab will be required, which could be thickened to form a suitable foundation for the new internal buttress walls where required.
11. The concrete slab floor was installed in June 2020. The structural report that supports the current proposal is dated October 2020⁵. This states that none of the proposed alterations would require modification of the steel frame, which would continue to act as the primary structure by resisting wind loads, and the vertical dead and live loads from the roof and walls. The vertical dead loads from the new internal dividing walls would all be supported directly off the existing concrete floor.
12. The application date for this current appeal scheme is November 2020. It was refused in January 2021. An update of the October 2020 structural report was provided in July 2021 as part of the appeal submission. This states that the concrete slab provides a practical and durable surface for the barn.
13. The Council's view is that the concrete slab floor was installed to facilitate the conversion of the building for residential purposes, citing that no intervening agricultural uses have occurred in the period between the last application (ref 19/03833/AGRN0T) and the application that is the subject of this appeal and

¹ Appeal reference APP/E2001/W/17/3185347

² Appeal reference APP/E2001/W/18/3216689

³ A further application for change of use to a dwelling was also refused in December 2019 (19/03833/AGRN0T)

⁴ Blackburn Wigglesworth & Associates Structural Appraisal, July 2017

⁵ Structural & Civil Consultants Ltd, October 2020

that the concrete slab will be insulated which would not be required for agricultural purposes.

14. The appellant's statement maintains that the building has been used for the storage of straw and hay in connection with his farming business for around four years, and since 2017 it has also been used to house livestock, including newborn calves. This statement maintains that the building has been used for agricultural purposes both before and after the installation of the concrete slab floor. The appellant contends that the concrete slab floor, which is not insulated, was needed in connection with the agricultural use of the building, as without it, the building would not have been suitable for the safe housing of livestock and would have been less effective for the storing of straw and hay.
15. At the time of my site visit, the building was relatively empty, and I did not observe any specific agricultural activities at the site. The Council bases its contention about no agricultural activities in part on observations during a number of officer site visits. I note the photographs of the site submitted by the Council also show a generally empty building. However, I acknowledge that these photographs and my observations are only snapshots in time.
16. Based on the evidence that has been submitted, the building may have been used for some form of agricultural purposes since the installation of the concrete slab floor. However, that is not determinative. Even if it has been used for agriculture within the terms of the GPDO, applying the balance of probability, and based on the evidence submitted, the intention and function of the concrete slab was to form part of the conversion⁶. The structural reports indicate that the barn has been in place for over thirty years and functioned adequately without a concrete base for the vast majority of that time. There is, conversely, clear planning history before me which points to the importance of the concrete base to achieving a residential conversion recently.
17. Accordingly, the laying of the concrete slab floor would constitute a commencement of the proposed works which is sought through the prior approval application. Indeed, I note that '125mm deep concrete floor base' is annotated on the proposed plans as part of what is sought⁷; it is not the function of an appeal to consider some hypothetical (or academic) scenario as to whether the pre-existing barn would be suitable for conversion in the absence of this element.⁸
18. Given that it is a prerequisite that prior approval is granted before work commences, it is not possible for prior approval to be granted retrospectively. It follows that prior approval is not deemed to be granted, but also that it cannot be granted.
19. As a consequence of this, the question of whether prior approval should be given for the proposed development on its merits does not arise, although I note that the main parties have set out their position regarding this.

⁶ Notwithstanding section 55(2) of the Town and County Planning Act 1990 as amended

⁷ Drawing No (00)06 revision D

⁸ With reference to Planning Practice Guidance Paragraph:105 Reference ID: 13-105-20180615

Conclusion

20. For the reasons given above and having had regard to all other matters raised, the appeal should be dismissed.

F Wilkinson

INSPECTOR