



Appeal Decision

Site visit made on 26 April 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Appeal Ref: APP/N4720/W/22/3292252

The Barn, Linton Common, Linton, Leeds, LS22 4JE

- 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 (GPDO).
 - The appeal is made by Simon Lewis against the decision of Leeds City Council.
 - The application Ref 21/05978/DPD, dated 7 July 2021, was refused by notice dated 31 August 2021.
 - The development proposed is change of use of the barn to single dwelling, to include internal works to provide 2 bedrooms, bathroom, living room, dining room, snug and integral garage and works to external envelope to provide windows to habitable rooms and access to building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has provided an amended drawing at appeal stage which reduces the redline boundary of the appeal site. I address this matter in my reasoning below.

Background and Main issue

3. The GPDO sets out that development is classed as permitted development if it consists 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 building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of that Schedule.
4. This is subject to a number of situations where such development is not permitted, listed under paragraph Q.1, and, subject to compliance with conditions, as set out under paragraph Q.2. Interpretation of Part 3 of the GPDO is provided in paragraph X of Schedule 2 to Part 3 (Paragraph X)
5. In this case, the Council has raised an issue in relation to the exclusion in paragraph Q.1(a) of the GPDO. The appellant states that the appeal site was in use on 20 March 2013, but the Council is not satisfied that the site was used solely for an agricultural use as part of an established agricultural unit at that date.

6. Further, the Council is concerned about the extent of the appeal site's curtilage with reference to paragraph X, which sets out the meaning of curtilage for the purposes of Part 3 Class Q.
7. Therefore, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, with particular regard to curtilage area and the use of the building on the relevant date of 20 March 2013.

Reasons

Curtilage

8. Paragraph X clarifies that for the purposes of Part 3 Class Q, "curtilage" means: (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; this is a factual test.
9. The drawing submitted with the planning application clearly indicates that the site area is outside the parameters of paragraph X. The drawing submitted with the appeal proposes a reduced site area. As part of its statement of case the Council concludes that even if the amended site area were to be accepted, the reduced area could not meet the parameters in paragraph X. I see no reason to doubt the validity of the Council's calculation of the land area around the building and the appellant has not disputed this.
10. Therefore, based on the evidence before me, the proposal cannot meet the requirements of paragraph X Part 3 even if I were to accept the amended plan. The appellant refers to the need to be pragmatic on this matter, but the proposal does not meet the requirements of the GPDO and therefore cannot be permitted development.

Use

11. The appeal building was constructed in 2010 and is described as a traditional masonry construction with outer stone cavity walls and slate roof. In accordance with Paragraph Q.1.(a) it is for the appellant to demonstrate that on 20 March 2013 the site was used solely for an agricultural use as part of an established agricultural unit.
12. Paragraph X sets out that for the purposes of Part 3 permitted development rights, '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 'agricultural use' refers to such uses. 'Site' means 'the building and any land within its curtilage' and 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.
13. Since there is no definition in the GPDO, the meaning of 'agriculture' should be taken from s336(1) of the Town and Country Planning Act 1990, which sets out examples of agricultural activities. The s336(1) list is not exhaustive but includes: horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins, or fur, or for the purpose of its use in the farming of land),

the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds.

14. A copy of a licence agreement between the appellant and Tom Dirom Agricultural Contractors Ltd has been provided as evidence of the use of the appeal site. The period of the licence is 12 years commencing on 1 June 2012. The licence grants to the licensee personal right of access to the land for horse riding, grazing his own stock, or mowing or for conservation of the pasture and for no other purpose for the period of the licence. The licence, among other things, requires that the licensee agrees that he will not conduct any business wholly or partly on the land; or bring onto or store on the land any machine or vehicle except one horse box or trailer; or bring onto or store on the land any goods whatsoever except goods connected with the licensee's own use of the land for equestrian purposes.
15. The statement of the licensee¹ confirms his business is agricultural contracting and refers to the site being used to provide versatile back up agricultural accommodation including agricultural machinery and occasional feed storage as well as fertiliser and pesticide storage on an intermittent basis. The statement confirms that the land was used for sheep grazing between 2011 and 2014 and the building was in agricultural use in March 2013. A subsequent affidavit submitted as part of the appellant's final comments confirms the information in the statement but does not materially add it.
16. The licence agreement and the statement/affidavit are contradictory. The licence precludes use of the land for a business and restricts storage other than for equestrian purposes. This is the basis on which the site could be occupied by the licensee under the licence.
17. Even if the licensee used the site differently the statement/affidavit indicates that the building was used for storage in connection with an agricultural contractor's business. There is not enough evidence before me to be clear that such storage would fall within the definition of agriculture. Further, there is little substantive evidence that the site has been occupied in the way set out in the statement/affidavit.
18. My site visit did not provide any corroborating evidence of occupation by the licensee and there is contrary evidence about the site's use and the building's occupation provided by third parties and the Council.
19. I appreciate that planning permission was originally granted for the erection of an agricultural building and that in a previous appeal² the Inspector proceeded on the basis that agriculture was the building's lawful use. Even so, these matters do not establish that the building would meet the parameters set out in Class Q.
20. With reference to the evidence that I do have, I consider that it does not confirm that the building was in use solely for an agricultural use as part of an established agricultural unit on 20th March 2013. As a result, the proposal does not meet the terms of Class Q and is not permitted development.

¹ Statement by Tom Dirom of Tom Dirom Agricultural Contractors Ltd 31 January 2022

² Appeal ref APP/N4720/W/20/3266018 – proposal for the demolition of barn and construction of new single dwelling

21. Overall, the change of use would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO with particular regard to curtilage area and the use of the building on the relevant date of 20 March 2013 and is not development permitted by it. Consequently, there is no need for me to consider whether prior approval would be required as it would not alter the outcome of the appeal.

Conclusion

22. For the reasons given, and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required.

23. Therefore, the appeal is dismissed.

Diane Cragg

INSPECTOR