



Appeal Decisions

Site visit made on 21 February 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 03 March 2023

Appeal A Ref: APP/Q1153/W/22/3292270

Weeke Farm, Lane Past Weeke Farm, Spreyton EX17 5AF

- 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.
 - The appeal is made by Mr & Mrs Sarah Barker against the decision of West Devon Borough Council.
 - The application Ref 3862/21/PDM, dated 13 October 2021, was refused by notice dated 6 December 2021.
 - The development proposed is the conversion of 1 No. existing agricultural barn to accommodate 1 No. larger dwellinghouse.
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Appeal B Ref: APP/Q1153/W/22/3292271

Weeke Farm, Lane Past Weeke Farm, Spreyton EX17 5AF

- 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.
 - The appeal is made by Mr & Mrs Sarah Barker against the decision of West Devon Borough Council.
 - The application Ref 3860/21/PDM, dated 13 October 2021, was refused by notice dated 6 December 2021.
 - The development proposed is the conversion of existing barn into 2 No. larger dwellinghouses.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Applications for costs

3. An application for costs was made by the Appellants against West Devon Borough Council. This application is the subject of a separate Decision.

Main Issues

4. It is common ground between the main parties that both appeal schemes meet the requirements of paragraph Q.1 of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) such that they would constitute development permitted under Class Q, subject to the prior approval of certain matters. For permitted development

under Class Q, prior approval is required in respect of a number of matters, including noise impacts of the development and whether the location or siting of the development make it impractical or undesirable for the use of the building to change.

5. The main issue in both appeals is whether the location or siting of the building would make it impractical or undesirable for it to change from agricultural use to a use falling within Class C3 (dwellinghouses), having regard to the living conditions of future occupiers in respect of noise and odours.

Reasons

6. The proposal in respect of Appeal A, seeks a change of use of part of a barn structure to a single residential dwelling. That barn comprises a steel framed structure with concrete ground floor slabs, timber clad walls and sheet roofing. Parking and curtilage would be located north of the barn, with the curtilage area being no greater than the footprint of the building.
7. The proposal in respect of Appeal B, seeks a change of use of part of another, larger, barn structure at Weeke Farm to two residential dwellings. That barn also comprises a steel framed structure with timber clad walls and sheet roofing, with parking and curtilage to be provided.
8. Both of the above-described barns form part of a farmstead group that includes agricultural buildings and structures, extensive hardstanding yard areas and a farmhouse which is a Grade II Listed Building. The appeal sites are accessed from the highway by a long trackway.
9. The Council maintains that there would likely be adverse effects on the living conditions of future residents of the appeal schemes in terms of noise disturbance and odours, due to the position of other farm buildings in close proximity, including the parts of the barn structures that would remain.
10. The Council has referred to paragraph Q.2(1)(b) of the GPDO in its reasons for refusal in respect of both appeal schemes. However, this paragraph relates to the noise impacts of the development itself. In that regard, the proposed dwellings that are the subject of both appeals, would be at sufficient separation distance to other residents such that the noise impacts of the development would be acceptable. I therefore do not consider paragraph Q.2(1)(b) to be determinative in these appeals.
11. Nonetheless, the Council also refer to concern in respect of paragraph Q.2.(1)(e), which requires consideration of whether the location or siting of a building makes it otherwise undesirable for the building to change from agricultural use to a dwellinghouse.
12. I have had regard to the Planning Practice Guidance (the PPG), including what is meant by undesirable for the change to residential use. Whilst the PPG lists a number of uses which may be considered undesirable for a residential building to be located adjacent to, this list is not definitive. Determining whether a location or siting is undesirable calls for an exercise of planning judgement.
13. I acknowledge the Appellants' submissions that the barn that is the subject of Appeal B is primarily used for storage and that the barn that is the subject of Appeal A is now largely redundant. However, if agricultural use were to occur and taking into account the nature of farming, there would be potential for

agricultural activities to take place in the wider site at any time of the day or night and seven days a week. Notwithstanding the current use of the agricultural buildings, the farmstead could be used for other agricultural purposes, including more intensive vehicular activity or livestock rearing. Consequently, the close proximity of the proposals to the agricultural buildings and activities would be likely to result in significant disturbance and nuisance to future occupiers of both schemes, including overnight.

14. Planning history confirms that comparable proposals were previously refused, in part, for similar reasons concerning impact on living conditions of future residents on account of noise disturbance. In seeking to overcome those reasons for refusal as well as addressing concerns regarding impact from odours, the Appellants have provided a Unilateral Undertaking (UU).
15. The UU provides a covenant on behalf of the landowners "Not to carry out any Intensive Agricultural Activity on the Site", with Intensive Agricultural Activity being defined as "Any agricultural activity taking place on the Site, including but not limited to intensive poultry farming or the storage of silage or chemicals, which by virtue of any noise, smells, risk of harm or other impacts arising therefrom is reasonably likely to interfere with the residential amenity of an occupier of the Dwelling".
16. The Council maintains that the wording of the UU would prevent any and all agricultural activity across the wider site and buildings, and which would be contrary to the permitted use of the buildings as agricultural. However, in that regard I find that, when taken as a whole, the wording of the UU seeks to restrict only agricultural activity that would reasonably be likely to interfere with the living conditions of future residents by reason of noise, smells and safety risks.
17. I acknowledge that the definition of 'Intensive Agricultural Activity' provided within the UU includes some of the wording from an example provided within the PPG. Nonetheless, as to whether a particular form of agricultural activity would be 'reasonably likely to interfere' with residential amenity would be a subjective matter. A particular agricultural activity may be considered to be reasonably likely to interfere with residential amenity by one person, whereas another could consider the same activity would not be reasonably likely to interfere with residential amenity. Whilst it is noted that the wording of the definition does include some specifics in that regard, namely in respect of the storage of silage or chemicals, I find that the definition provided within the UU would not be sufficiently precise such that the UU could be enforced.
18. Further to the above, the Appellants have also put it to me that a condition could be attached to any grant of planning permission that would restrict intensive agricultural activities across the wider site and within other buildings that comprise the farmstead. The Appellants further suggest that a planning condition could be included that required demolition of the remaining parts of the barns that would not be converted to residential use.
19. I have noted the appeal decisions referred to me by the Appellants. Whilst the demolition of the remaining parts of the barns would potentially remove some risk from noise or odours impacting on the living conditions of future residents, the land that would remain could still be used for agricultural activity immediately adjacent to the proposed dwellings. Furthermore, such an action would not provide mitigation for noise disturbance and odours emanating from

other nearby agricultural structures and areas of hardstanding used for agricultural purposes, that would be likely to adversely affect the living conditions of future residents.

20. In the specific circumstances of the cited appeal at Newbiggin-on-Lune, the Inspector concluded that a planning condition, which provided that no intensive agricultural operation or use within another farm building close to the site shall take place, was necessary and reasonable to prevent the development being harmful or objectionable to the living conditions of future residents. In a second appeal at Helperthorpe, whilst dismissing the appeal on other grounds, the Inspector found that, in the specific circumstances of that case, it would be appropriate to restrict the use of an adjacent farm building in order to ensure that it is not used for intensive livestock or agricultural operations or other activities likely to be prejudicial to the living conditions of potential future occupants of the proposed conversion.
21. However, whilst the Inspector in the Helperthorpe decision found that a planning condition could overcome the issues regarding noise, smells and other forms of disturbance, the decision does not provide specific details of how such a condition could be constructed or worded so that a clear and distinguishable definition of what would, or would not, constitute 'intensive' operations or other activities would be.
22. I have only been provided with very limited details in respect of the appeal at Newbiggin-on-Lune. While the Inspector found that in the specifics of that case a condition restricting 'intensive agricultural operation or use' would be sufficient and appropriate, in this appeal and for similar reasons given above in respect of the wording of the proposed UU, whether a particular activity is or is not 'intensive' is a subjective matter that is likely to differ from person to person. As such, consistent with the above findings, I conclude that the use of such wording within a planning condition would not be sufficiently precise or enforceable. No suggested alternative wording for a condition that precisely defines the types or levels of agricultural activity which could be considered to be 'intensive' have been provided.
23. For the above reasons, I conclude that the location and siting of the appeal buildings makes it undesirable for the proposed change of use to dwellinghouses, as identified in paragraph Class Q.2(1)(e) of Part 3 of Schedule 2 of the GPDO. This is due to proximity to agricultural buildings and areas used for agricultural activity, and the subsequent potential effect on the living conditions of future residents of the proposed dwelling as a consequence of noise disturbance and odours.

Other Matters

24. An interested party has raised concerns regarding whether the appeal sites were in agricultural use as of the dates stipulated in paragraph Class Q.1(a) of Part 3, Schedule 2 of the GPDO, in addition to concerns regarding structural survey reports provided by the Appellants in support of the planning applications that are the subject of these appeals. Further concerns regarding the appeal proposals on grounds that the submitted UU and the planning conditions suggested by the Appellants, would be ineffective, have been considered above under the main issues.

25. The evidence before me confirms that the site was in use as part of an established agricultural holding at the specified date. There does not appear to be any evidence before me that suggests that there has been a permitted change of use from agricultural. Whilst I acknowledge and have carefully considered the submissions regarding structural survey reports, I see no reason to disagree with the Council's conclusions that the existing buildings are suitable for conversion and that works to the buildings are considered to constitute conversions of the buildings with only works reasonably necessary to facilitate the conversion, as required under Part 3, Schedule 2 of the GPDO.

Conclusion

26. For the reasons given above, I conclude both Appeal A and Appeal B should be dismissed.

Mr A Spencer-Peet

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/Q1153/W/22/3292270	Mr and Mrs Sarah Barker
Appeal B	APP/Q1153/W/22/3292271	Mr and Mrs Sarah Barker