



Appeal Decision

Site visit made on 4 April 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Appeal Ref: APP/V0728/W/23/3314967

**Simmons Nurseries, Redcar Road, Marske By The Sea,
Redcar and Cleveland TS11 8LE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Cliff Jowsey (Land Management) against the decision of Redcar and Cleveland Borough Council.
 - The application Ref R/2022/0605/PNC, dated 18 July 2022, was refused by notice dated 13 September 2022.
 - The development proposed is change of use and conversion of existing portal framed agricultural building into residential dwellings (five units) (class C3) to form a 'terrace' including hard standing parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have taken the description of the development proposed from the Council's decision notice which I consider to be concise and accurate. I have, however, omitted some superfluous elements which are not acts of development.

Background and Main Issue

3. Under Article 3(1) and Schedule 2, Part 3, Class Q.(b), of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), development is permitted for the 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) together with building operations reasonably necessary to convert that building, subject to limitations and conditions.
4. The local planning authority (LPA) may refuse the application where it considers that the proposed development does not comply with the conditions, limitations or restrictions set out in paragraphs Q.1. and Q.2. The application may also be refused where it is considered that the developer has provided insufficient information to enable the LPA to establish whether the proposed development complies with those same conditions, limitations or restrictions.
5. In this case, the Council contend that the appeal site, including the building, was not used solely for an agricultural use as part of an established agricultural

unit as required under Q.1.(a), and that consequently the appeal proposal is not permitted development.

6. The main issue is, therefore, whether the proposal would be permitted development, having regard to the requirements set out within Schedule 2, Part 3, Class Q of the GPDO.

Reasons

7. In order to benefit from the permitted development right afforded by the Class Q provisions, the building proposed for the change of use must constitute an "agricultural building". An "agricultural building" is defined in Paragraph X., Part 3, Schedule 2 of the GPDO as "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". Therefore, to constitute an "agricultural building", the building must be used for agriculture and, furthermore, the agricultural activity must be undertaken on a commercial and organised footing.
8. The Council have supplied photographic evidence of the interior of the building the subject of the appeal dating from December 2019 and June 2021. These photos show that, at those times, the building contained a broad range of items, materials and waste together with a caravan. During my own site visit, the caravan was no longer present but, otherwise, the building contained a similar array of items, materials and waste. The Council have also submitted that, in recent years, waste has been in place in areas around the building. This was also evident on my visit as was the generally overgrown and unkempt appearance of this land. Furthermore, although only a single letter of public representation was submitted on the application, that letter alleges a lack of agricultural usage in recent years.
9. In combination, this evidence indicates to me that the building is not being used for agriculture of any form including for the purposes of a trade or business. Although the appellant puts to me that there is no specific requirement under Class Q for the building to be, currently, solely in agricultural use, given the aforementioned definition of "agricultural building" it follows that a building not being used as such cannot meet that definition.
10. The appellant may live a considerable distance from the site and has encountered problems supplying it with power. As a consequence, it is put to me that this has made farming the land more difficult and the site has suffered from crime and forms of fly-tipping, which it is stated, accounts for the forms of items and waste I have referenced above. However, whilst this may demonstrate that the appeal site has not purposefully been used for storage, aside from a spell which the appellant acknowledges took place in 2019, it does not provide any evidence of agricultural use. Furthermore, that the site is suffering from such issues indicates further to me that the site is not being used for agriculture on a commercial and organised footing given the significant degree to which those issues would undermine and disrupt such efforts.
11. The building had been in situ on 20 March 2013 for approximately 4 years. Having regard to the description of the application, it was granted permission as a barn. The submissions made to me draw upon the content and assessment of the planning application at that time together with the appellant's description of agricultural activities at the site which, it is claimed,

have taken place since a land purchase in 1980. Whilst in some circumstances it may be appropriate to accept such evidence with little challenge, I note that the public representation alleges that regular agricultural use was not taking place prior to 2015. Given this, the evidence before me of an absence of agricultural usage in more recent years and, given the absence of more compelling evidence demonstrating the use of the site on 20 March 2013, I am not convinced by the appellant's assertions regarding the use of the appeal site on the specified date. Therefore, and even if I were to set my earlier findings on the current use and condition of the site to one side, I cannot accept the evidence before me as being an adequate demonstration that the site was solely being used for an agricultural use as part of an established agricultural unit on 20 March 2013.

12. I accept that no planning permission for the change of use of the appeal site has been granted, whilst it may also be the case that any fly-tipping or storage activities have not taken place to the extent that would amount to a material change in the use of the land. However, this does not alter that I have found, firstly, based on the evidence before me the building is not an "agricultural building". Secondly, I am unable to conclude that the proposal would comply with the limitations of paragraph Q.1.(a).
13. For these reasons, the proposal would not be permitted development having regard to the requirements set out within Schedule 2, Part 3, Class Q of the GPDO. Given these findings, it is not necessary for me to consider the proposal against the limitations at paragraphs Q1.(b) – (m), as applicable. As considerations in relation to prior approval are a follow-on condition stage under paragraph Q.2., they can therefore only apply if the development is otherwise permitted development. As the proposal would fail to constitute permitted development, there is no need to consider whether prior approval is required.

Other Matters

14. As the proposal would not constitute permitted development, I cannot attribute any weight to any benefit that may be derived from the provision of the proposed dwellings, an increase in activity at the site, the re-use of the building or the implications that this may have upon surveillance in the area.
15. The main issue in this case is whether the proposal would be permitted development - this is a legal test. Therefore, the Council's handling of the application and their dissemination of information to the appellant is not a determinative factor in my decision.
16. Finally, the appellant has drawn my attention to some other development in the area, which they have stated is unauthorised. However, it is not clear to me what relevance or bearing this has upon the appeal proposals.

Conclusion

17. For the reasons given above, I conclude that the appeal is dismissed.

H Jones

INSPECTOR