



Appeal Decision

Site visit made on 4 May 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/E2001/W/23/3314605

Barn, Howes Lane, Emmotland, North Frodingham YO25 8JS

- 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) (GPDO).
 - The appeal is made by Mr. James Oldroyd, on behalf of Mr and Mrs Oldroyd, against the decision of East Riding of Yorkshire Council.
 - The application Ref 22/02122/AGRNOT, dated 22 June 2022, was refused by notice dated 17 August 2022.
 - The development proposed is change of use of agricultural barn to form a dwelling with associated building operations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have used the description of the proposal as set out in the appeal form and decision notice. This describes the proposal more concisely than that contained within the application form.
3. The appellant has provided amended plans as part of their appeal. These include minor changes to the proposed fenestration within the building and additional detail with regards to vehicular access, parking and visibility splays. The Council has had an opportunity to comment on these amendments through the appeal process. I am satisfied that the amendments do not change the development to such a degree that to consider them would deprive those who should have been consulted on the change the opportunity of such consultation. In this case, I have therefore accepted the amended plans as part of the appeal submission.
4. For the purposes of Schedule 2, Part 3, Class Q of the GPDO, "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. The red line boundary for the proposal includes an area of land immediately beside the building, to the south and east, not greater than the land area occupied by the building. I have dealt with the appeal on this basis.
5. However, I recognise this area does not include the provision of car parking, turning space or access to the site. The GPDO definition concerns the size of

the curtilage only and does not specify what must be included within it. The curtilage of the appeal site as demarcated by the red line would not conflict with these terms of the GPDO, and so this alone would not preclude the proposal from being permitted development. The implications of this for the prior approval matters would however still need to be considered.

Background and Main Issue

6. Under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO, planning permission is granted for (a) change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within use class C3 (dwellinghouses) together with (b) building operations reasonably necessary to convert the building, subject to limitations and conditions.
7. Paragraph Q.1(a) indicates that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 or, in the case of a building which was in use before that date but was not in use on that date, when it was last in use or, in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.
8. Paragraph Q.1(i) indicates that development is not permitted by Class Q(b) if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse, and partial demolition to the extent reasonably necessary to carry out such works.
9. Paragraph Q.2(1) requires the developer to apply to the local planning authority to determine whether the prior approval of the authority will be required as to transport and highways impacts of the development, flooding risks on site and the design or external appearance of the building, among other specified matters.
10. The Council's main contention is that the proposed development does not benefit from the provisions of paragraph Q(a) as the building has had an intervening domestic storage use and is therefore not an agricultural building. Furthermore, in respect of paragraph Q(b), the Council contend that the proposal would not comply with the limitations of paragraph Q.1(i) as the building operations proposed would go beyond what could reasonably be considered a conversion.
11. In addition, the Council maintain that even if the proposal were permitted development, it would not be acceptable with respect to the prior approval matters set out above.
12. Therefore, the main issue in this case is:
 - Whether the proposal would constitute permitted development under Schedule 2, Part 3, Class Q of the GPDO, with particular regard to the provisions and limitations of paragraphs Q(a), Q(b) and Q.1(i).

Reasons

Schedule 2 Part 3 Class Q(a)

13. The appeal site sits within part of an open field, close to the access from Howes Lane. The appeal building is a conventional steel framed structure with metal wall and roof panels, sitting on a concrete slab. The proposal seeks to convert the building for use as a dwellinghouse, with associated building operations.
14. In the first instance, in order to benefit from the provisions of Schedule 2, Part 3, Class Q of the GPDO, the development must relate to a change of use of a building and any land within its curtilage from a use as an agricultural building. Schedule 2, Part 3, Paragraph X of the GPDO defines an "agricultural building" as a building used for agriculture and which is so used for the purposes of a trade or business; and "agricultural use" refers to such uses.
15. The appeal is supported by a signed declaration from the owner of Manor House Farm. It indicates that the barn and land were used since 2010 in association with an agricultural business at Manor House Farm. It also states that the barn and land at Howes Lane were part of their agricultural holding on 20th March 2013. The appellant maintains that since this period there have been no other uses other than agriculture, and the building was still in active agricultural use at the time of purchase in July 2020. However, the evidence before me does not clearly demonstrate when the use ceased.
16. The building and land appear to have been severed from the agricultural unit at Manor House Farm. The appellant acknowledges that the building has been used for storage, albeit of items relating to the upkeep and maintenance of the land and of the building itself, including wood working and gardening equipment, with some elements of welfare provision and domestic storage. The Council consider that the building is no longer used for agriculture and an intervening use has occurred, with no evidence of agricultural activity taking place from either within the building or the adjoining land.
17. At the time of my site visit, I saw that the building was being used for storage of a mix of items including gardening equipment and tools, various building materials including a considerable amount of wood, a compact tractor and a classic car. There was also a sofa, wood burner, storage cabinets and drawers. The building has a power supply with various woodwork tools and machinery set up inside. It also features a mezzanine level providing further storage space and shelving for paint tins and other containers.
18. Externally, informal surfacing comprising tree bark, gravel and dirt surrounds the building and extends to the site access. Further building materials and wood were stacked alongside the external walls. A modest area for growing plants and a polytunnel are located to the rear and demarcated by a low wire mesh fence, beyond which is a picnic bench. A large plough was sited to the side among a group of recently planted trees. The wider field appeared mown.
19. From my own observations and the evidence before me, the use of the site appears considerably different in character to that of an agricultural use. Inside the building, storage has been formally arranged, and the space has the characteristics of a workshop. There are also elements of private recreational space both inside and outside. The nature of the use, and the quantity of materials, tools, equipment, and other paraphernalia appears surplus to the

upkeep and maintenance of the land and the building itself and does not appear to be for agricultural purposes. Ultimately, there is no compelling evidence before me to suggest that there is any agricultural operation being carried out from the building or on the land which is so used for the purposes of a trade or business.

20. The evidence before me suggests the use of the site in this manner has been ongoing for some time, with the site in similar use during site visits carried out by the Council in 2021 and 2022. Considerable effort would be required to clear the site of its current use or return it to a genuine agricultural use. I am therefore not persuaded that the current use of the site can reasonably be described as intermittent, temporary or minimal. While I recognise there has been no formal application or permission granted to change the use of the building, it is my view that a material change of use has occurred.
21. The appellant contends that any intervening or alternative use would not supersede the previous use, unless it was a permanent and significant change to the character of the land use, and that this position is supported by caselaw¹ and other literature on this matter. I am of the view however that the current use is not of a temporary nature and is materially different in character to an agricultural use.
22. My attention has also been drawn to an appeal decision from 2018 referred to in support of this appeal². The full details of that case are not before me and ultimately each case must be determined on its individual merits. However, from the decision it appears that this related to an agricultural building that lay dormant for some time, albeit with some sporadic non-agricultural use. The Inspector in that case highlighted that the evidence was incomplete and finely balanced, and ultimately insufficient to demonstrate that a material change of use had occurred. The same cannot be said in this appeal case and this therefore does not lead me to a different conclusion.
23. While I recognise the building is located some distance from any residential properties and is its own planning unit, this does not preclude it from being used for domestic storage or for other uses that are different in character to an agricultural use, irrespective of whether they are authorised.
24. Having regard to the definitions set out in Schedule 2, Part 3, Paragraph X of the GPDO, and for the purposes of Class Q(a), I therefore do not consider the building constitutes an agricultural building. The proposal would therefore not be permitted development under Schedule 2, Part 3, Class Q(a) of the GPDO.

Schedule 2 Part 3 Class Q(b)

25. In addition to the building operations referred to in Paragraph Q.1(i), The Planning Practice Guidance (PPG)³ clarifies that for the building to function as a dwelling it may also be appropriate to undertake internal structural works. These may include works to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.

¹ Westminster City Council v. British Waterways Board [1985] A.C. 676; [1984] 3 All E.R. 737

² Appeal Ref: APP/X1545/W/18/3198348

³ Paragraph: 105 Reference ID: 13-105-20180615 Revision date: 15 06 2018

26. The PPG indicates however that only where the existing building is already suitable for conversion to residential use does it benefit from the Class Q permitted development rights. It is not the intention of the GPDO to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. The judgement in *Hibbitt v SSCLG* [2016] EWHC 2853⁴ held that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure.
27. The proposal includes building operations to facilitate the change of use, however a detailed schedule of all of the work proposed or required is not before me. The proposed plans show the insertion of various windows and doors to the external walls at ground and first floor, and several roof lights. Internally, the proposed plans also include the provision of a first-floor level.
28. The submitted Structural Report⁵ recommends that sections of damaged cladding should also be repaired and replaced, though the full extent of this is not clear. I observed several areas of damage during my site visit and, combined with the number of new openings proposed, is likely to require considerable refacing of the building.
29. The Structural Report appears to have been prepared before the latest proposed plans were produced. It recommends that, once design proposals are in place, the adequacy of the existing steel frame must be assessed against the loading proposals, and where required additional steel framing/columns should be installed. No assessment against the latest design proposals appears to have been carried out. The Structural Report also recommends that any new significant structural elements are supported from ground level on columns and beams and are not fixed into the existing exterior walls or frame.
30. In view of the above, I am not satisfied that the existing building is capable of conversion in the form proposed, without considerable additional structural work and reinforcement. On the basis of the evidence before me, I find that the extent of the proposed development would amount to rebuilding work that would go beyond what is reasonably necessary for the conversion of the building to residential use.
31. My attention has been drawn to another appeal decision from 2021 referred to in support of this appeal⁶. The full details of that case are not before me. However, from the decision it appears the building in that case was of an appreciably different form and construction to that of the appeal building. Furthermore, the proposal in that case appears to have been supported by a more conclusive design assessment confirming the ability of the structure to support the loads from the conversion. There is also no indication of considerable additional structural works or reinforcements having been required. This example is therefore materially different to the appeal scheme and does not lead me to a different conclusion.

⁴ *Hibbitt and another v Secretary of State for Communities and Local Government* (1) and *Rushcliffe Borough Council* (2) [2016] EWHC 2853 (Admin).

⁵ SEPTEMBER 2021 STRUCTURAL REPORT ON STEEL FRAMED BARN, HOWES LANE, EMMOTLAND, NORTH FRODINGHAM, YO25 8JS PROJECT NO. MGC/SJH/HW/45535-Rp001-REV A

⁶ Appeal Ref: APP/W3330/W/21/3268761

32. Reference has also been made within the appellant's evidence to several other similar schemes granted prior approval by other local authorities. The appellant contends that these examples demonstrate additional loading through the floor slab is an acceptable solution. While the plans provided bare some similarities to the appeal building and proposals, the full details of these cases and the circumstances leading to the decisions are not before me. I am therefore unable to draw any meaningful comparisons to the appeal scheme.
33. For the purposes of Class Q(b), I therefore conclude that the extent of the building operations proposed would not be reasonably necessary to convert the building to a dwellinghouse. The proposal would therefore not be permitted development under Schedule 2, Part 3, Class Q(b) of the GPDO.

Other Matters

34. Given my conclusion above, there is no need for me to consider the further prior approval matters of transport and highways impacts of the development, flooding risks on site and the design or external appearance of the building, as it would not alter the outcome of the appeal.

Conclusion

35. For the reasons given above I conclude that the appeal should be dismissed.

Ryan Cowley

INSPECTOR