



Appeal Decision

Site visit made on 17 May 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/N2739/W/23/3314886

Brackenhill Farm, Brackenhill Lane, Church Fenton, Selby LS24 9RP

- 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 B Sohota against the decision of Selby District Council.
 - The application Ref 2022/1008/ATD, dated 23 August 2022, was refused by notice dated 18 October 2022.
 - The development proposed is the change of use of agricultural building and land to residential use (C3) - one dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. North Yorkshire Council was created on 1 April 2023, and it replaces the former Selby District Council as local planning authority. However, the decision on the application for prior approval was made by Selby District Council and I have therefore referred to Selby District Council in the banner heading above.
3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits development consisting of: (a) 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 Class C3 (dwellinghouses); or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use. The proposal would comprise both forms of development under Part 3, Class Q of the GPDO.
4. The permitted development rights created through Class Q of Part 3 of the GPDO are limited by various exceptions set out at paragraph Q.1. which describes those circumstances where development is not permitted. Paragraph Q.1.(a) and (h) are relevant to the determination of this appeal.

Main Issue

5. The main issue is whether the proposal is permitted development by virtue of Article 3, Schedule 2, Part 3, Class Q of the GPDO.

Reasons

6. Paragraph Q.1. of Class Q states, amongst other things, that '*Development is not permitted by Class Q if—(a) the site was not used solely for an agricultural*

use as part of an established agricultural unit—(i) on 20th March 2013...or (iii) 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;’.

7. For the purposes of Class Q, an ‘established agricultural unit’ is defined in Schedule 2, Part 3, Paragraph X of the GPDO as being ‘*agricultural land occupied as a unit for the purposes of agriculture on or before 20th March 2013 or for 10 years before the date the development begins*’. An ‘agricultural building’ is defined 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.
8. The appellant claims that the building was solely in use for agricultural use on 20 March 2013 and I have seen no evidence that directly disputes this claim. However, the Council states that, subsequent to its consideration of the prior approval the subject of this appeal, it now has reason to believe that there has been a material change in the use of the building since March 2013.
9. The matter of an intervening material change of use now in dispute between the main parties was not raised when the Council considered the application for prior approval. I note that the appellant contends that the current or recent use of the building is irrelevant in meeting the requirements set out in Class Q. However, it is necessary, as a matter of fact to be determined on the evidence provided, and from what I saw during my site visit, that I am able to conclude, that the proposal complies with the limitations imposed through paragraph Q.1. of the GPDO before proceeding to consider any other relevant matters, including compliance with the conditions provided in the GPDO.
10. The appellant refers to a letter from the Council dated 18 October 2018, which provided pre-application advice (the pre-app advice) on another matter, as confirmation of their claim regarding the use of the building on 20 March 2013. The pre-app advice describes the proposal for which advice was sought in 2018 as ‘*demolition of industrial units and formation of 2 detached dwellings*’.
11. The pre-app advice confirms that the authorised use of the site is agricultural use containing an agricultural building, and that the Council had no records of planning permission being granted to change the land or building to industrial use. It does not confirm, as a matter of fact, that the building was solely in use for agriculture on 20 March 2013. However, whether any intervening material change of use occurred around or before 2018 is a matter for the Council to resolve since little substantive evidence regarding the use of the building at that time has been provided to me.
12. During my site visit I saw little evidence to demonstrate that the site and the building is currently used solely for an agricultural use. The building contained many of the features one would associate with a vehicle repair workshop including a mechanical vehicle lift, vehicle jacks, several tool racks, and a car was stored in a covered area which appeared to be undergoing renovation. The floor was partly painted and showed significant areas of oil staining. The building has been subdivided internally to create storage space. However, whilst I saw several sealed opaque bags and other items securely wrapped in opaque polythene, I was unable to see what these items were. An area has been partitioned off inside the building to provide what appeared to be an office equipped with a kitchen sink, fridge, toilet, microwave oven, cupboards and seating. These features appeared to me to have been in place for some time.

13. Based on the information provided to date, and from my observations during my site visit, it appears to me that the appeal building is not currently used solely for an agricultural use. The appellant refutes the Council's claim that unauthorised development has occurred at the site. This is not a matter I need address in determining the appeal before me. However, I do need to be satisfied that the proposal could be permitted development under the terms of Class Q. To benefit from the relevant permitted development right the proposal must involve a change from a use as an agricultural building. From what I saw during my site visit this would not be the case. Accordingly, I conclude that the proposal is not permitted development by virtue of Article 3, Schedule 2, Part 3, Class Q of the GPDO. Therefore, it is not necessary for me to proceed to consider the prior approval matters.
14. The Council's reason for refusal concerns the limitation on permitted development given at paragraph Q.1.(h) of Class Q of Part 3 of the GPDO. This establishes that a proposal would not be permitted development if it would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. The Council's concern in this respect is limited to the effect of the rendering proposed to be applied to existing blockwork comprising the lower part of the front wall of the building.
15. I saw that the corrugated cladding to the upper part of the building projects beyond the lower blockwork wall. The proposed rendering to the blockwork wall would not project beyond that existing cladding to any perceptible degree. The proposal would therefore not conflict with paragraph Q.1.(h). However, this does not overcome my conclusion regarding the use of the building.

Conclusion

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

David English

INSPECTOR