



Appeal Decision

Site visit made on 27 June 2023

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Appeal Ref: APP/V3310/W/22/3310924

Land to the west of White House Lane, Loxton, Somerset

- 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) (the Order).
 - The appeal is made by Mr Peter O'Hara against the decision of Sedgemoor District Council.
 - The application Ref 24/22/00019, dated 20 July 2022, was refused by notice dated 13 September 2022.
 - The development proposed is the change of use of building and curtilage to Class C3 use (dwellinghouse).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 3, Class Q(a) of the Order permits the 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); and, under Class Q(b), the change of use together with building operations reasonably necessary to convert the building for that purpose. In this case both the change of use and the building operations to convert the building in question have been proposed, and the Council have refused the scheme for contravening the requirements of Class Q(a) and Class Q(b).

Main Issue

3. Consequently, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Order, having particular regard to whether the site was used solely for agricultural use as part of an established agricultural unit, and whether the building operations would be reasonably necessary to convert the building to a dwelling.

Reasons

Agricultural Unit

4. 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 that 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.

5. The appeal site and the associated field and access track have had a complex planning history. From my site inspection it was apparent that a gate and stone pillars had been erected controlling access onto an area of gravelled hardstanding which extends across the breadth of the field. A block and metal clad walled building was positioned within this gravelled area, with hardstanding in front and extending into the field. In addition to the building, there was a touring caravan and a static caravan. The field was grassland, being grazed by a pony, and within the field and near to the boundaries there were piles of tyres.
6. An enforcement investigation was undertaken by the Council in 2010 as a result of the use of the land as a banger racing track with associated activity and items, such as tyres, vehicles, portaloos, and caravans. The contravention notice and its site plan comprised both the appeal site and the associated field, and the owner of the field made a statement that the land was being used for banger racing. Photographs from the enforcement investigation show an open sided timber framed building, with a partial roof that seems to be in a state of disrepair. An aerial photograph provided by the Council dated 2014 shows the line of the racing track, miscellaneous storage occurring, and also the partially roofed building. Having regard to this evidence, whilst there may have been an application for the retention of a haystore on the site in 2005 (application ref: 24/05/00029) it is not clear whether the use of the appeal building on 20 March 2013 was solely for agriculture, nor when its last use solely for agriculture occurred.
7. The appellant purchased the field and building in 2016, and it forms part of a wider agricultural unit used for calf rearing, with stock numbers varying between 30 to a maximum of 100. The building was described by the appellant as no longer capable of use, being redundant in 2016 due to it being in a state of disrepair. In 2017 planning permission for a livestock building was granted (application ref: 24/17/0006), albeit for whatever reason this building was not implemented. At this time the appellant farmed approximately 2.3ha.
8. Notwithstanding this permission, the agricultural use of the appellant's land is not clear. To qualify from the permitted development rights the site must be or have been used solely for an agricultural use as part of an established agricultural unit. An agricultural holding number was provided with the original application, but details of the established agricultural unit have not been provided for the appeal. It might be the case that agricultural uses have been occurring on the site, but how and when the land and building has been used for agricultural purposes has not been demonstrated.

9. I appreciate there have been no further enforcement investigations since the banger racing, and that the appeal site has a complex planning history, along with changing ownership. However, the absence of enforcement action does not in itself prove that the land was being used for agricultural purposes. Furthermore, the current building on the appeal site is constructed of concrete blocks, metal and cement fibre sheets, which is very different to the open sided timber framed partially roofed building shown in the photographic evidence of the Council. When these works were undertaken is also unclear as the original application form states that no works under permitted development rights have been carried out since 20 March 2013. Moreover, apart from some miscellaneous storage, the existing building is empty and shows no evidence of having been used for livestock, as the walls and floor have a clean, crisp appearance. Apart from the pony, there was also no evidence of the field being grazed by cattle.
10. Whilst the appellant is disappointed that the Council did not obtain more details of the agricultural enterprise, the onus is on the appellant to provide sufficient information to demonstrate compliance with the conditions, limitations, and restrictions of Class Q. On the basis of the evidence before me it is uncertain whether the appeal site was in use solely for an agricultural use as part of an established agricultural unit on 20 March 2013. There is no evidence to demonstrate when the building was last in agricultural use. In addition, having regard to the circumstances of this case, it has not been demonstrated that a site brought into use after 20 March 2013 was in agricultural use for at least ten years before the date the development under Class Q begins. For these reasons, the proposal would not be development permitted by Class Q.

Building Works

11. From the evidence before me, the building currently upon the appeal site is very different to that in the photographic evidence of 2010 and 2014. Notwithstanding this, the Council also refused the scheme because it had not been demonstrated that the existing building is capable of conversion without substantial works that go beyond what would be reasonably necessary to facilitate the residential use of the building. However, given my findings above, as the development is not permitted under Class Q(a), I have no need to consider the matter of building operations.

Other Matters

12. During my site inspection the appellant offered to provide additional information concerning the appeal case. The appellant chose to pursue the appeal as written representations, and consequently, I am obliged to consider the case on the basis of the evidence before me, with no discussion of the merits of the case occurring during my site visit.

13. The original application was supported by a Flood Risk Assessment and a Bat Survey (January 2022). The latter report has been submitted as the development site is within the North Somerset and Mendip Bats Special Area of Conservation (SAC). The Conservation of Habitats and Species Regulations (2017) requires the decision maker to secure compliance with the regulations so as to protect these habitat sites. However, as I have found the development would not be permitted by Class Q, I have no need to consider further either the impact of the proposal upon the SAC nor flooding matters.
14. Finally, concerns regarding the Council's handling of the case, including requesting additional information, relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Conclusion

15. Having regard to my findings, the development would not satisfy the requirements of Class Q of the Order and therefore is not development permitted by it. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR