



Appeal Decision

Site visit made on 5 September 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/D0840/W/23/3315626

Farm building at Willow Lake, Besore, Threemilestone, Truro, Cornwall TR3 6BL

- 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 R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Jack & Ms Charlotte Lindsay against the decision of Cornwall Council.
 - The application Ref PA22/05698, dated 17 June 2022, was refused by notice dated 29 July 2022.
 - The development proposed is notification for change of use of agricultural building to a flexible use class C1 (guest house).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Jack & Ms Charlotte Lindsay against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of the proposed development is taken from the appeal form, which is consistent with the description given on the Council's decision notice. Section E of the appeal form states that the description of the development has not changed from that stated on the application form. The Council determined the proposal on the basis of the description in the appeal form and I will do the same.
4. The Council's officer report confirms the applicants' names, and the Council has determined the application on that basis. The appellants details as set out under section A of the appeal form are consistent with the Council's officer report, and I have dealt with the appeal on this basis.
5. Under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), planning permission is granted for development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within one of the following provisions of the Use Classes Order – a) Class B8 (storage or distribution) of Schedule 1; b) Class C1 (hotels) of Schedule 1; or c) Class E (commercial, business or service) of Schedule 2. This is subject to the specified limitations and conditions.

Main Issue

6. The main issue is whether the proposed development would be permitted development.

Reasons

7. In accordance with Schedule 2, Part 3, Paragraph R.1(a) of the GPDO development is not permitted if the building was not solely used as part of an established agricultural unit on 3 July 2012; 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 building which was brought into use after 3 July 2012, for a period of at least 10 years before the date development under Class R begins.
8. It is for the appellants to demonstrate that on the relevant date the site was used solely for an agricultural use as part of an established agricultural unit in compliance with Paragraph R.1(a). There is no requirement for the site to be in agricultural use immediately before the change of use is undertaken.
9. Agriculture is defined in Section 336, of the Town and Country Planning Act 1990 (as amended) and includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of woodlands where that use is ancillary to the farming of land for other agricultural purpose.
10. Schedule 2, Part 3, Paragraph X of the GPDO further sets out that for the purposes of Part 3 permitted development rights, 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is also used for the purposes of a trade or business, and 'agricultural use' refers to such uses. 'Established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture – for the purposes of Class R, on or before 3 July 2012 or for 10 years before the date the development begins.
11. Whilst the appellants contends the Council has incorrectly considered the period when the building has been in use, the Council disputes whether the building was used for the purposes of a trade or business as part of an established agricultural unit. During my site visit I noticed that the land holding was being used to grow fruit and plants and included meadow land and wooded areas. The building was being used to store lawn mowers, some plant pots and buckets, as well as a variety of other smaller items.
12. However, even though the building may have been permitted as an agricultural building, there is little substantive evidence of activity or link, within the submitted evidence, to demonstrate that the building was solely used for an agricultural use as part of an established agricultural unit in compliance with Paragraph R.1(a) of Class R. For example, there is little substantive evidence of a business or business accounts before me.
13. Moreover, although I have been provided with aerial photographs providing images of the site at various different dates, the existence of the appeal building in 2016 is disputed by the Council. These are poor quality images, and the appellant has confirmed that fallen conifers in the vicinity of the appeal site damaged the roof of the building in 2016. There is little substantive evidence

confirming the extent of the damage and, from the evidence available, it is not clear whether the building was rebuilt because of that damage.

14. Therefore, even if the appeal building was present on the site before 2016 it still adds uncertainty as to whether the appeal scheme complies with the requirements of the GPDO Schedule 2, Part 3, Class R.
15. Additionally, development permitted by Class R relates to the change of use of a building and any land within its curtilage. This right does not extend to the erection of a new building.
16. The building subject of the appeal is a small building comprised of irregular shaped walls, which partially support a light weight corrugated metal roof. Two upright timber posts also support the roof. Whilst the northeast and northwest elevations of the building are fully enclosed, the southwest elevation is open, and the southeast elevation is partially enclosed.
17. The permitted development right under Class R does not include associated operational development that would be reasonably necessary to facilitate the change of use. Therefore, the permitted development right under Class R is restricted to the change of use only and, if agreed, any subsequent physical works are then to be the subject of separate consideration as part of a planning application.
18. The proposal is not supported by a structural report and at my site visit I noticed that the building appeared to be in poor condition, including with uneven, leaning walls and relatively expansive open areas to two side elevations.
19. Based on the information submitted and my observations on site, it appears that the proposal would necessitate substantial alterations to the building, including structural alterations and the replacement of the roof and walls. There is no information regarding whether the existing supporting structure would be strong enough to take the proposed use. Thus, there is insufficient information to establish whether the proposal could be carried out without considerable alterations which would amount to a complete rebuild. It therefore follows that there is insufficient evidence that the proposal would benefit from permitted development rights under Class R of the GPDO.
20. The Council may refuse an application, under Paragraph W of the GPDO, where the developer has provided insufficient information to establish whether the development complies with any conditions, limitations or restrictions in Part 3. The burden of proof is on the appellants and for the foregoing reasons, in this case, on the basis of the evidence before me, I find that there is uncertainty as to whether the site complies with the requirements of the GPDO Schedule 2, Part 3, Class R.

Other Matters

21. I have been referred to other appeal decisions. In relation to the appeal at Treravel Farm¹, the Inspector concluded that operational development reasonably necessary to use the land or building for the proposed use is required to be the subject of a separate planning permission. Therefore, he concluded, it was not necessary to consider the extent of such alterations as

¹ APP/D0840/W/20/3254577

part of a prior approval application. Nevertheless, in that case the Council did not object on grounds of the adequacy of the building. Moreover, the Inspector acknowledged that structural reports were provided confirming that the building was structurally in a good condition and capable, as a matter of principle, of accommodating an alternative use. The appeal at Dutch Barn² related to a planning application following a prior approval application. Therefore, these cases are not directly comparable to the appeal proposal, and I have determined the appeal on its own merits.

22. I am aware of the Hibbitt case³, which related to development under Class Q of the GPDO and, as such, I am not convinced that the judgement can be of assistance for this appeal.

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

J White

INSPECTOR

² APP/F1610/W/17/3188502

³ Hibbitt and another v Secretary of State for Communities and Local Government and another [2016] EWHC 2853 (Admin)