



Appeal Decision

Site visit made on 12 September 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date 19 October 2023

Appeal Ref: APP/F2415/W/22/3311555

Hall Farm, Back Lane, Leire, Leicestershire LE17 5EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Miss Lois Tierney against the decision of Harborough District Council.
 - The application Ref 22/00983/PDN, dated 29 April 2022, was refused by notice dated 23 June 2022.
 - The development proposed is notification of prior approval for a change of use under Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 2 larger Dwellinghouses. All details on the adequate natural light in all habitable rooms is clearly shown on the proposed drawings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site edged red shows a collection of buildings (four in total), but only two of which are subject of the prior approval. The block plan drawing reference 502/005 Rev 0 refers to the smaller barn with a curved roof as Unit 1 and the larger building as Unit 2. For ease of reference, and in accordance with the block plan drawing, I will refer to the barns as Unit 1 and Unit 2 hereafter.

Main Issue

3. Class Q(a) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) 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) of the Schedule to the Use Classes Order. Class Q(b) of the GPDO permits building operations reasonably necessary to convert the building referred to in (a) above.
4. The main issue in this appeal is whether the proposal would be permitted development, with particular regard to whether the requirements of paragraphs Q.1(a), (g) and (h) would be met.

Reasons

Paragraph Q.1 (a)- Agricultural use

5. 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. It also defines 'established agricultural unit' as 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. Whether or not the site or appeal

building were used solely for agriculture on or before the relevant date is a matter of fact and degree based on the evidence presented.

6. The appellant contends that the appeal buildings and site have been in agricultural use for 25 years, in connection with Hall Farm Buildings, prior to being sold to the appellant in July 2021. The Council, however, consider that at the date of the application the buildings and land were not being used solely for agricultural use and were being used for general storage, including household items.
7. I observed during my site visit that Unit 2 was being used for the storage of various items, including tools, machinery as well as including an office with security cameras and a kitchen on a mezzanine floor. Unit 1 did include an old portacabin type structure, but it was mostly empty. There was no obvious indication that any specific agricultural use or activity was being carried out on the wider yard area, or within Units 1 and 2. However, the current use of the site and the buildings itself are not always determinative since paragraph Q.1(a)(i) permits development where the site was in agricultural use as part of an established agricultural unit on 20 March 2013.
8. The appellant seeks to support the position that the land and buildings were solely used for agriculture with a statement from the previous owners. The statement indicates that the appeal site, the adjoining field and fishing pond was land they owned for 25 years. It is stated that the land and buildings were in agricultural use for cattle, horse grazing and machinery storage. The pond was used for commercial fishing by members of a local fishing club together with associated parking. There is no detailed evidence from the Council to suggest that Unit 1, Unit 2 or the land was not in agricultural use on the relevant date.
9. Nevertheless, there is insufficient information in the previous owner's statement to establish whether the land they describe, which is greater than the appeal site, was the whole or part of the established agricultural unit. Further to this, the use of the land described includes a mix of uses¹, and the statement does not specifically outline the use of the yard and buildings subject of the appeal on 20th March 2013. The mixed use described, coupled with the ambiguous description of how the specific buildings and land were used, leads me to conclude that insufficient detail has been provided to show what the established agricultural unit was, and whether the land and buildings were used solely for agriculture as part of that unit.
10. In addition, as already outlined above, an agricultural building is defined as 'a building used for agriculture, and which is so used for the purposes of a trade or business. Whilst the definition of an agricultural building does not require the activity to make a profit, it must be used as part of a trade or business. Under Schedule 2, Part 3, paragraph W(3) of the GPDO, the Local Planning Authority may refuse an application where the developer has provided insufficient information to establish whether the development complies with any conditions, limitations or restrictions in Part 3.
11. Aside from confirming that the buildings were used for a mix of cattle and horse grazing, machinery storage and fishing, neither the appellant nor the statement from the previous owners provides substantive evidence to indicate that the site was operated for an agricultural trade or business on the relevant date. There is

¹ agriculture, cattle and horse grazing, machinery storage and a commercial fishing pond

no holding number provided or other supporting evidence to confirm the previous owners used the buildings in a trade or commercial activity.

12. The burden of proof is on the appellant and in this case, based on the evidence before me, whilst the site may have been used in connection with agriculture historically, it has not been sufficiently demonstrated that it was solely used for agriculture on 20th March 2013 as part of an agricultural unit, and for the purposes of a trade or business. Accordingly, based on the evidence before me, the proposal would not be permitted development under Class Q.1(a).

Paragraph Q.1 (g)

13. The Council have determined that a proposal fails to be considered as permitted development as Schedule 2 of the GPDO does not apply if building operations or use carried out are unlawful. Specifically, in this case the Council have determined that Unit 2 had been clad in timber, and an alternative use in the form of storage was being carried out. Also, works had been carried out on other buildings on the site.
14. Firstly, as already indicated, the use at the time of the Council site visit does not necessarily matter in the instance that it is proposed and proven that the buildings were being used solely for agriculture on 20 March 2013. There is also no detail within the Council Officer Report to suggest an unauthorised use was occurring on that date. Furthermore, the other buildings on the site are not subject of the application for prior approval.
15. However, with respect to the cladding works, the appellant has indicated in her Statement of Case that the previous owners carried out the cladding works in 2017, as they benefited from permitted development works allowed under Part 6, Class A of the GPDO. It is indicated that this is confirmed in the previous owner's statement submitted with the appeal.
16. I have had regard to the previous owner's statement, but there is no confirmation that the works to clad the barn were carried out by them in 2017. In any event, if works to clad the barn were carried out in 2017 by the previous owners, Unit 2 would be contrary to Paragraph Q.1(g) of the GPDO. This states that development is not permitted by Class Q if development under Class A (a) of Part 6 (agricultural buildings and operations) has been carried out on the established agricultural unit since 20th March 2013; or where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins.
17. Consequently, I find that as development permitted by Part 6 Class A was carried out in 2017 on the agricultural unit, the proposal would contravene paragraphs Q.1 (g) (i) and (ii) of the GPDO. As a result, the proposal to convert Unit 2 would not be permitted development under Class Q.

Paragraph Q.1 (h)

18. The Council has also determined that Unit 1 is contrary to Paragraph Q.1(h) of the GPDO, which states that development is not permitted by Class Q if the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.
19. The appellant has set out that the existing and proposed plans show no alteration to the scale and height of Unit 2. This is since works to replace the roofs to all the

barns on the land were approved as part of a planning application approved in 2017². This included a larger and taller curved roof structure on Unit 1 as well as installation of solar panels. It is suggested that the works approved have commenced on site, thus the permission is valid in perpetuity. In this respect, the works to increase the scale of the roof and the overall height of Unit 1 can be carried out at any time, and the building could be converted in line with the existing and proposed plans.

20. Despite the commencement of the 2017 permission, Unit 1 has not been altered, and retains a lower, shallower curved roof than that detailed on the existing plans. In this respect, to carry out works to convert Unit 1 in line with the details submitted, the roof would need to be removed and replaced with a larger, taller roof. As such, these works would result in the external dimensions of the building being beyond the external dimensions of the existing building.
21. I have had regard to the appellant's position, but there is no indication in paragraph Q.1 (h), that the works would be permitted if the external dimensions of the building do not extend beyond the dimensions of the *existing plans*. Neither does it state that the works are permitted if they do not extend beyond the existing building following the implementation of a valid planning permission. I appreciate that there is a valid planning permission, but the works to increase the roof have not been implemented, and Class Q only permits the conversion of the existing building. As the works have not been implemented, the roof would have to be extended prior to conversion.
22. The proposed works could not therefore have been carried out as shown on the submitted plans as it would require a roof extension to the existing building. Consequently, for the purposes of the Order, I am of the view that the proposal contravenes paragraphs Q.1 (h). On the balance of probability, it has not been demonstrated that at the time of the application, the proposal to convert Unit 1 would comply with Class Q(h) of the GPDO.

Other Matters

23. Had I found the proposal to be compliant with the Class Q.1 (a to h), it would have been necessary to determine the extent of the proposed building operations and whether they would amount to a conversion. However, for the reasons set out above, I am dismissing the appeal, and therefore considering this matter further could not alter my decision.

Conclusion

24. It is determined that the works contravene the permitted development rights established under Class Q.1(a), (g) and (h) of the GPDO. The appeal should, therefore, be dismissed.

M. P. Howell

INSPECTOR

² Council ref 17/00888/FUL