



Appeal Decision

Site visit made on 24 November 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/V3310/W/22/3313736

Springfield Gate, Yarrow Road, Mark, Somerset TA9 4LR

- 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 Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr Dan Collins against the decision of Somerset Council.
 - The application Ref 33/22/00031, dated 2 September 2022, was refused by notice dated 17 October 2022.
 - The development proposed is described as, "change of use of an agricultural building and the land within the curtilage to form one smaller dwelling (as defined within the GPDO 2015)".
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Class Q(a) and Q(b) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of agricultural building to 1 no. dwelling and associated operational development at Springfield Gate, Yarrow Road, Mark, Somerset, TA9 4LR in accordance with the application Ref 33/22/00031, dated 2 September 2022, and the details submitted with it (including Appeal Site Location Plan, Site Location and Block Plan (Drawing No. 200_01), Proposed Plans and Elevations (Drawing No. 200_03), Material Retention Plan (Drawing No. 200_04 (Rev. A))), and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appeal was submitted against the decision of Sedgemoor District Council. Somerset Council has now taken over the functions of Sedgemoor District Council. Somerset Council has therefore been named in the banner header, above.
3. The description of development given in the planning application form is, "See accompanying Class Q Statement". Therefore, the description of development provided in the banner header above has been taken from paragraph 3.1 of the Class Q Statement (dated 31 August 2022). This differs from that shown on the appeal form and decision notice. The latter identifies the proposed development as, "Application for the Prior Approval of the proposed change of use of agricultural building to 1 no. dwelling and associated operational development." I have used this description in my consideration of the appeal and in my decision since it best describes the proposed development in precise and concise terms.

Background and Main Issue

4. Under Class Q of Part 3 of Schedule 2 of the GPDO, planning permission is granted for agricultural buildings to dwellinghouses, subject to limitations and conditions. The Council however refused the prior approval application, stating that it has not been adequately demonstrated that the building has been used solely for an agricultural use as part of an established agricultural unit.
5. Therefore, the main issue is whether the proposed development would constitute permitted development, with particular regard to paragraph Q.1(a) of Class Q of Part 3 of Schedule 2 of the GPDO.

Reasons

6. The appeal site comprises a single-storey building (the Class Q building), which is sited at the far end of a track which adjoins Yarrow Road, near Mark. The track is also within the red line boundary of the site.
7. It is common ground between the main parties that the site was used solely for an agricultural use as part of an established agricultural unit on the relevant date specified in paragraphs Q.1(a)(i) and Q.1(a)(ii) of Class Q of Part 3 of Schedule 2 of the GPDO, that is, on 20 March 2013. The Council however allege that a material change of use has occurred at some point since then, meaning that, in the Council's view, the Class Q building is no longer considered to be an agricultural building for the purposes of Class Q.
8. If this were the case, this would mean that the proposed development would either fall outside of the permitted development right entirely, or that alternatively conflict would arise with paragraph Q.1(a)(iii) of Class Q, which provides 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 in the case of a site which was brought into use after 20 March 2013, for a period of at least 10 years before the date development under Class Q begins.
9. I have had regard to the submitted Statutory Declaration. This states that the site has been used for agricultural purposes for over 20 years. The copies of the Flood / Herd Register supplied shows that between 2012 to 2018 the site typically held approximately 8 sheep. The Statutory Declaration confirms that the Class Q building was predominantly used to sort hay and straw used for the sheep flock.
10. The Council have asserted that the level of sheep referred to in the Statutory Declaration is not indicative of an agricultural enterprise, but instead of hobby farming. However, in this case, the Statutory Declaration states that sheep have been bought and sold. I have not been provided with specific evidence which contradicts this particular statement in the declaration.
11. Moreover, records have been provided showing movements of sheep, which provides support for the existence of commercial activity. Furthermore, to my mind, the work involved in managing approximately 8 sheep over a number of years goes far beyond what could be classed as a hobby. Therefore, the evidence indicates that the site has been used for the purposes of a business related to agriculture. The exhibits provided in the Statutory Declaration indicate that this business was operating until at least December 2018.

12. The Council undertook 2 site visits in 2022. On the basis of these site visits, it has been said that a material change of use has occurred. For the avoidance of doubt, it is not the purpose of this appeal decision to provide a formal determination as to what the lawful use of the site was at any particular point in time, in the same way that a Lawful Development Certificate would do. Rather, this appeal decision solely relates to whether the proposed development complies with the relevant requirements of the GPDO.
13. The Council has made reference to various items of equipment observed on their site visits, which includes domestic-scale used car parts, tyres, a radiator, and a car windscreen outside the site, and wall-to-wall racking with parts, a hydraulic lift, and a ride-on mower inside the site. However, the appellant has clarified that some of these items have been used in recent years for ongoing maintenance and repair, as part of the agricultural activities undertaken on site.
14. Although some of the items referred to by the Council found outside the Class Q building, such as domestic-scale used car parts, appear unrelated to an agricultural use, equally the parts present on the racking and the hydraulic lift in the Class Q building could conceivably be used for the maintenance and repair of agricultural machinery, and the ride-on mower was likely used for mowing the grassed areas near the site.
15. Taking all of the above into account, on a balance of probabilities I consider it likely that a change of use has not occurred but that the established agricultural use has continued beyond the date of the most recent exhibit referred to in the Statutory Declaration, up to the present day. This finding is reinforced by what I saw when I visited the Class Q building on my site visit, which included bales of straw and a tractor.
16. Whether or not the appellant has employment in fields unrelated to agriculture does not alter the facts identified above in relation to the use of the site itself for agricultural purposes. Any static caravan that may have previously been located near the Class Q building appears to have been located outside the red line boundary for the site. Therefore, none of these matters changes my findings on this main issue.
17. Hence, the proposed development would not conflict with Class Q when read as a whole, which relates to agricultural buildings, nor with the requirements of paragraph Q.1(a)(iii) of Class Q. I therefore find that the proposed development would constitute permitted development, with particular regard to paragraph Q.1(a) of Class Q of Part 3 of Schedule 2 of the GPDO.

Other Matters

18. It is common ground between the main parties that the proposed development would comply with the prior approval requirements of Class Q. I have no substantive evidence to indicate otherwise. Therefore, prior approval can be granted for the proposed development.

Conditions

19. I have had regard to the conditions suggested by the Council. I have considered them against the advice on conditions set out in the National Planning Policy Framework and the Planning Practice Guidance (PPG).

20. The site is in Flood Zone 2, and is surrounded by Flood Zone 1. Whilst the site has no known history of flooding issues, the Environment Agency have requested that a condition should be imposed in relation to flood resilience measures. In this regard, as the site has a medium probability of flooding, the risk and impact of flooding on the future occupiers of the proposed dwelling must be mitigated. I therefore concur that a condition relating to this matter is necessary (imposed as condition 1).
21. As the site has been in agricultural use for a number of years, the future occupiers of the proposed dwelling could potentially be at risk, if the site is contaminated. To ensure that risks are minimised, it is necessary for a condition to be imposed requiring a risk assessment in this regard. The proposed development relates to one barn on a small site, and given the need for the requirements of imposed conditions to be proportionate to the scale of the proposed development, I have imposed a short-form version of the condition suggested by the Council (imposed as condition 2).
22. For the avoidance of doubt, in relation to the suggestion made by the appellant regarding this condition, the condition imposed does not require a remediation scheme if the initial risk assessment does not find any contamination (except in the case that contamination is found during the course of the development which has not been previously identified).
23. The Somerset Drainage Boards Consortium have recommended that an informative is added to any permission granted. However, the PPG advises that informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes¹. The appellant will however be aware of the comments of the Somerset Drainage Boards Consortium in relation to Land Drainage Consents.

Conclusion

24. I have found above that the proposed development would be permitted development. The proposed development would also comply with all of the prior approval requirements relating to Class Q. Therefore, for the reasons given above, and having considered all relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR

¹ Paragraph 21a-026-20140306

Conditions Schedule

- 1) Prior to construction above damp-proof course level, a scheme of flood resilience measures shall be submitted to, and approved in writing by, the Local Planning Authority. The measures shall be incorporated into the design of the dwelling in accordance with the approved scheme and shall be retained thereafter.
- 2) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to, and approved in writing by, the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to, and approved in writing by, the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to, and approved in writing by, the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to, and approved in writing by, the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 15 working days of the report being completed and approved in writing by the Local Planning Authority.

End of Conditions Schedule