



Appeal Decision

Site visit made on 3 January 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18.01.2024

Appeal Ref: APP/P1133/W/23/3318956

Teignharvey Barn, Teignharvey Road, Shaldon, Devon E291400 N72069

- 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.
 - The appeal is made by Mrs H McCormack against the decision of Teignbridge District Council.
 - The application Ref 22/02359/NPA, dated 16 December 2022, was refused by notice dated 13 February 2023.
 - The development proposed is application to determine if prior approval is required for a proposed: Change of Use of Agricultural Buildings to Dwellinghouses (Use Class C3), and for building operations reasonably necessary for the conversion. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by Mrs H McCormack against Teignbridge District Council. The application is the subject of a separate decision.

Preliminary Matters

3. I have taken the address from the appellant's appeal form as that shown in the application form is not wholly accurate. Additionally, the description of development in the banner heading above is taken from the titled application form. It is clearer and more precise than the wording set out in the relevant part of the application form and the Council's decision notice. In that respect, the appellant uses this description in their appeal form and I am therefore satisfied that no one will be prejudiced as a result.
4. The appellant has provided an additional plan that was not before the Council when it made its decision. The plan identifies land ownership and does not fundamentally change the proposal. The Council has had an opportunity to comment on this plan, thus any procedural unfairness has been avoided. For these reasons, I am content to accept this additional plan.
5. The plans show development that is not subject to the application, including works to an adjacent building. Permission cannot be granted for any works that fall outside the remit of the prior approval procedure.

Background and Main Issues

6. The Planning Practice Guidance (PPG) states that *permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity.* This is effectively a 2 stage process where it is necessary in the first instance to determine whether or not the proposal is permitted development.
7. Class Q of Part 3 of Schedule 2 to the General Permitted Development Order (the GPDO) states that development consisting of Q(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) of the Schedule of the Use Classes Order; and Q(b) building operations reasonably necessary to convert the building, is permitted development.
8. Where development is proposed under Class Q(a) together with Class Q(b) and found to be permitted development, it is subject to the condition under paragraph Q.2(1). This requires that before beginning the development, an application must be made to the local planning authority for a determination as to whether the prior approval will be required, amongst other things, as to the location or siting of the building.
9. The Council refused the application for prior approval for 2 reasons. Firstly, on the basis that it would be impractical and undesirable for the building to change from an agricultural use to a use falling within Class C3 (dwellinghouses) as set out in Q.2(e). This is due to its close proximity to an existing agricultural building and a telecommunications mast that they considered would harmfully affect the living conditions of future occupants. Secondly, the Council could not be certain that the necessary biodiversity mitigation measures would be within the control of the appellant.
10. In respect of the first reason for refusal, the Council has subsequently agreed that potential conflicts associated with the proximity of the proposed dwelling to the agricultural building could be dealt with by the use of an appropriately worded condition. This matter is therefore no longer in dispute.
11. During the appeal process, the Council then raised concerns as to whether the proposal was permitted development in respect of Q.1(a), claiming that the building was not in an agricultural use in association with an agricultural unit on the 20th of March 2013 (the relevant date). The appellant has responded to the Council's concerns and would therefore not be prejudiced by its inclusion with the main issues.
12. Accordingly, I consider the main issues in this case to be:
 - whether the proposed development would be permitted development with regard to the provisions of Part 3, Class Q, paragraph Q.1(a), and if so:
 - whether prior approval should be granted, with particular regard to the location of the building and biodiversity.

Reasons

Agricultural use

13. Paragraph Q.1 of Part 3 of the GPDO provides 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 (ii) 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. Paragraph X of the GPDO defines an 'agricultural building' as one used for agriculture and which is so used for the purposes of a trade or business. An 'agricultural use' refers to such uses. An 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.
14. The appeal site comprises a large barn within a plot of grassed land, adjacent to a telecommunications mast. The scheme would involve the separation of the larger building to form a single dwellinghouse. This would leave a smaller building that is proposed to be retained for agricultural purposes.
15. The submitted evidence shows that there were likely to be other non-agricultural uses relating to a former owner's stone masonry business at the appeal site prior to the relevant date. 3rd party representations claim that since 2007 the building has been used for storing various vehicles, stock cars and caravans, though I have been provided with no substantive evidence of any of these activities at the appeal site.
16. The appellant says that they purchased the appeal site in 2011. They declare on their appeal form that the appeal site does not form part of any agricultural holding. Although no statutory declarations have been submitted, the appellant advises that the building was let to a farming business between 2011 and 2015, which is set out in an email. Their legal representative corroborates this account of events in a letter dated 31st May 2023. They add that the use was in association with an existing agricultural operation, though there is little evidence to demonstrate that the building was being used as part of an established agricultural unit. Notwithstanding this, previous letters from this solicitor to the Council in August and October 2013, approximately 5 months after the relevant date, stated that 'no agricultural activity has taken place on the site for a considerable period of time and the building is redundant'. The evidence before me is therefore contradictory.
17. I acknowledge the appellant's legal submissions. Furthermore, I note there is no evidence before me of a formal application for a change of use of the appeal building. However, it is not for me, as part of this appeal, to determine whether previous activities represent a material change of use. In fact, the GPDO in Q.1(a) requires the site to be or have been last used solely for an agricultural use. If the appeal building was indeed redundant at the relevant date, the evidence demonstrates that prior to this, it is probable that it was in a mixed use, when last in use.
18. Taking all matters into consideration, based upon what has been presented to me, on the balance of probabilities, the building was not solely in an agricultural use as part of an established agricultural unit on either the relevant date or when last used. Consequently, the appeal proposal fails to demonstrate compliance with Class Q.1(a) of the GPDO. As such it does not constitute permitted development.

Other Matters

19. As I have concluded that the proposed development is not permitted development under Class Q.1(a) of the GPDO, it is not necessary for me to make any determination on Q.1(b) or the prior approval matters. These prior approval matters include whether the location or siting of the building in the proximity of the telecommunications mast makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwelling. Additionally, they relate to whether necessary biodiversity mitigation measures would be within the appellant's control.
20. The appeal site falls within 10km of the Exe Estuary SPA and Dawlish Warren SAC and is therefore subject to the requirements of the 2017 Conservation of Habitat and Species Regulations. However, as I am dismissing the proposal on different grounds there is no need to consider this matter further in this appeal.
21. The appellant's comments in respect of the planning history and processing of the application are noted. However, these have no bearing on my decision which is based on the planning merits of the development within the context of the GPDO.

Conclusion

22. For the reasons given above, the appeal is dismissed.

J Hills

INSPECTOR