The Planning Inspectorate

Appeal Decisions

Site visit made on 15 January 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal A Ref: APP/K1128/W/23/3320840
Yeo Farm, Ermington Road, Ivybridge, Devon PL21 0LF

- 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 appeal is made by Mr Gareth Derrick against the decision of South Hams District Council.
- The application Ref 1042/22/PDM, dated 9 March 2022, was refused by notice dated 28 October 2022.
- The development proposed is the conversion of farm store and workshop to a Class C3 dwellinghouse.

Appeal B Ref: APP/K1128/W/23/3323793
Yeo Farm, Ermington Road, Ivybridge, Devon PL21 0LF

- 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 appeal is made by Mr Gareth Derrick against the decision of South Hams District Council.
- The application Ref 0757/23/PDM, dated 28 February 2023, was refused by notice dated 3 May 2023.
- The development proposed is the conversion of the Shippen Barn to a Class C3 dwellinghouse.

Decisions

1. **APPEAL A** – The appeal is allowed and approval is granted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of farm store and workshop to a Class C3 dwellinghouse at Yeo Farm, Ermington Road, Ivybridge, Devon PL21 0LF in accordance with the terms of the application, Ref 1042/22/PDM, dated 9 March 2022, and the plans submitted with it, subject to the following condition:

   1) The development hereby permitted shall be carried out in accordance with the following approved plans: D8111S-001 - Existing Site Plans; D8111S-002 Existing Plans; D8111S-003 Existing Elevations; D8107S-004 - Proposed Site Plans; D8111S-005 Rev B - Proposed Plans; D8111S-006 Rev B - Proposed Elevations; D8111S-007 Rev B - Proposed Sections.

2. **APPEAL B** - The appeal is allowed and approval is granted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted

Development) (England) Order 2015 (as amended) for the conversion of the Shippen Barn to a Class C3 dwellinghouse at Yeo Farm, Ermington Road, Ivybridge, Devon PL21 0LF in accordance with the terms of the application, Ref 0757/23/PDM, dated 28 February 2023, and the plans submitted with it, subject to the following condition:

1) The development hereby permitted shall be carried out in accordance with the following approved plans: D8111G-001 – Existing Site Plans; D8111G-002 – Existing Plans; D8111G-003 – Existing Elevations & Sections; D8107G-004 – Proposed Site Plans; D8111G-005 Rev B – Proposed Plans; D8111G-006 Rev A – Proposed Elevations & Sections.

Preliminary Matters

3. As set out above, there are two appeals on this site. They relate to two buildings located in close proximity to each other and within the same ownership. To avoid duplication, I have therefore considered them in the same Decision letter.

Background and Main Issue

4. Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits the change of use of an agricultural building to a dwelling, together with any building operations reasonably necessary to convert the building for that purpose. An "agricultural building" is defined by Paragraph X of Part 3 of the GPDO as a building used for agriculture and which is so used for the purposes of a trade or business.

5. Paragraph Q.1.(a) says that such development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or

   i) 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

   (ii) 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.

   An "established agricultural unit" is defined as agricultural land occupied as a unit for the purposes of agriculture on or before 20 March 2013 or for 10 years before the date the development begins.

6. The Council disputes that the buildings are agricultural buildings for the purposes of Class Q, and whether they were solely in use for agriculture, for the purposes of a trade or business, as part of an established agricultural unit on 20 March 2013. There is, however, no dispute that, if I find otherwise, the remaining requirements of Class Q would be satisfied, including the matters listed for consideration in Paragraph Q.2.(1).

7. Consequently, the main issue in both of these appeals is whether the buildings were solely in use for agriculture, for the purposes of a trade or business, as part of an established agricultural unit on 20 March 2013, and whether they are agricultural buildings for the purposes of Class Q.

Reasons

8. The buildings subject of the appeals lie in the countryside to the south of Ivybridge. They are closely associated with the dwelling known as Yeo Farm, and form part of a group of buildings arranged around a courtyard. Appeal A relates to a narrow stone building to the south of the house, which is referred to variously in the documentation as the workshop/store and the stables. Hereinafter, I shall refer to it as Building A. Appeal B relates to a stone and block building to the west of the house, which is referred to as the Shippen Barn but, for ease of reference, I shall call it Building B.

9. There is no dispute that, historically, the land and buildings around Yeo Farm were part of an active agricultural enterprise. The evidence indicates that the house and buildings fell into disuse and disrepair from 1980 until the appellant's purchase in 1993. In the following years, Buildings A and B were repaired and rebuilt, a process that was completed by 1998. It is contended by the Council that the works were so extensive that the buildings should be considered as new, rather than restored. However, this is of little importance, as it is accepted that the buildings are immune from enforcement action, so are now lawful, and would have been so on 20 March 2013. Furthermore, the appellant does not rely on the historic use of the original buildings. Rather, his contention is that the buildings, as restored, were solely in use for agriculture as part of an established agricultural unit on 20 March 2013, and that this remains the case.

Use of buildings on 20 March 2013

10. In support of the applications, the appellant submitted a timeline of agricultural activity at Yeo Farm during his ownership. At the outset, in 1993, the land and buildings were registered under the appellant's name for agricultural purposes as a County Parish Holding. At this time, the land was grazed by cattle under agreement with a local farmer, Mr Skelley, for commercial meat production. From 1994-98 Building A was used by the appellant for the rearing of pigs for slaughter and sale. The use of the land, under agreement with local farmers, for grazing animals for commercial slaughter and sale, continued through 1999-2006, and in 2007 an agreement was finalised with another local farmer, Mr Cook, for the grazing and management of his cattle, sheep, and lambs on the land for meat production and commercial sale. This agreement has continued to the present day, and was in place on 20 March 2013. During this time, the husbandry of the land remained the responsibility of the appellant, including water supply, stock fencing, hedge management, application of fertiliser, and reseeding.

11. The appellant has given a statutory declaration (SD) dated 27 May 2022, in which he states that there has been continual and substantive agricultural use of Buildings A and B from 1993, to 20 March 2013, and until the present. Furthermore, he states that, over the same period, the buildings have been used continuously by him and his family as an integral part of the agricultural unit that continues to be known as Yeo Farm. This SD, and a later one dated 23 August 2022, also corroborates many of the details set out in the timeline of agricultural activity. A third SD, given by Mr Alan Cook and dated 7 July 2022, has also been provided. It confirms that, since 2007, and continuously since then, Mr Cook has had an agreement for the grazing and management of his livestock for commercial purposes on the appellant's land. It also states that

the buildings have been used by the appellant, during this period, for various operations necessary to meet his responsibilities under the agreement.

12. The SDs carry substantial weight due to their legal standing and the penalties available against those making a false declaration. Unless there is cogent evidence to cast doubt on their veracity, they provide a compelling case that both buildings were in use for agriculture, for the purposes of a trade or business, as part of an established agricultural unit on 20 March 2013.

13. The Council draws attention to a previous letter from the appellant, in which he accepted that the buildings were not in use solely for agricultural purposes as part of an established agricultural unit on 20 March 2013. I am not, however, fully aware of the context within which that letter was written. The appellant has subsequently stated that it followed from erroneous advice about what constituted farming, and that the buildings were, in fact, used solely on that date for agriculture as part of an established agricultural unit for the purposes of a trade or business. In any event, the SDs are more recent, and carry greater weight, due to their legal basis. They set out, in some detail, the extent of agricultural activity on the land, its commercial nature, and the role played by the buildings in the business. Consequently, they provide a more robust basis for my assessment.

14. The SD dated 27 May 2022 does state that there have been a variety of temporary, incidental and *de minimis* domestic uses in the buildings. However, it also states that both buildings were in agricultural use on 20 March 2013. There is no evidence before me to demonstrate that, on this particular date, there was any significant level of non-agricultural use of either of the buildings.

15. The Council draws attention, in particular, to a cheese production enterprise that involved the use of parts of both buildings. The appellant's SDs state clearly that this only took place from the buildings in the period from June – October 2013. Nevertheless, the Council points to other evidence that cheese production began as early as 2011. However, it has been clarified by the appellant that only experimental production, confined to the farmhouse, was taking place at this time. Consequently, the additional material provided by the Council does not cast doubt on the unequivocal evidence contained in the SDs in this regard.

16. The Council also refers to a small wooden shed which was, until recently, stationed to the south of Building B, and was used for storage unconnected with the agricultural activities of the farm. The area where the shed was located lies within the application site. However, the evidence indicates that the shed was not on the site on 20 March 2013. The later erection of the shed does not, therefore, cast any doubt on whether the application site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.

17. In summary, the SDs provide convincing evidence that the land and buildings were in use for agricultural purposes on 20 March 2013. Furthermore, they demonstrate that the agriculture was carried out on a commercial basis. Although it is clear that the buildings have been used over the years for varying levels of domestic storage, and other temporary uses, there is no cogent evidence to demonstrate that on 20 March 2013 there was any significant use of the buildings other than for agriculture. Consequently, the evidence before me indicates that, on the balance of probabilities, both

buildings were solely in use for agriculture, for the purposes of a trade or business, as part of an established agricultural unit on 20 March 2013.

Whether the buildings are agricultural buildings for the purposes of Class Q

18. The three SDs attest to the continued and current use of the land and both buildings for commercial agricultural purposes. At my visit I was able to inspect all four bays of Building A. The first bay, at the northern end of the building, was largely empty, save for a bench in the corner with small tools. However, there was an oil-stained carpet on the floor bearing indentations from caterpillar tracks, presumably from the excavator that was being used nearby for the installation of a field gate post. The second bay contained tools and equipment, such as chain saws, brush cutters, spades, rakes, etc that would be suitable for use in the maintenance of the agricultural land. The third bay was an animal pen, with hay on the floor. Whilst no animals were being housed, the droppings were evidence of their relatively recent occupation.

19. The final bay had a tiled floor and a uPVC inner door, which would perhaps suggest it has been used for an alternative purpose in the past. However, at the time of my visit it was used for the storage of miscellaneous items including a field gate, wheelbarrow, plant stakes, blue plastic storage cylinders, a chain saw, tree guards and plant pots, all of which relate to the husbandry of the land. I therefore saw no evidence of the use of the building for any purposes other than agriculture.

20. The main part of Building B was largely empty, but it housed a small tractor, with a trailer load of hay, and there was some tool storage in one corner. Whilst part of the floor was tiled, there was no evidence of any non-agricultural activity in this part of the building, except for a trampoline stowed in the rafters.

21. The small lean-to extension on the southern side of Building B has a different character, with a double-glazed uPVC door, ceramic tiled floor, and lined walls, clearly reflective of its former temporary use for cheese production. However, I saw that it is now in use as a farm office and rest room with a sink, a desk, and shelving on the wall housing safety equipment, such as goggles, hard hats and first aid items. There was also a 2024 wall calendar on display setting out land maintenance tasks for the year, such as summer grazing, tree health checks, and replacement planting. The chart also included reminders of office-based tasks, such as preparing grazing agreements. Consequently, whilst the lean-to is finished to a high standard, I saw no evidence that Building B was being used for any purposes other than agriculture.

22. The Council's evidence demonstrates that both buildings have been used in the past for various levels of non-agricultural activity. As already stated, the cheese production involved a limited area of each building and was for a relatively short period of time. This is confirmed in the appellant's two SDs. It was never authorised by a grant of planning permission, and did not endure for sufficient time to become a lawful use. The current use of the buildings for agricultural purposes therefore remains their lawful use for planning purposes.

23. The Council also refers to an Officer's visit to the site in April 2022, and photographs have been provided showing a considerable level of non-agricultural storage taking place in both buildings at that time. However, this level of domestic storage was, again, a temporary arrangement, as is

evidenced by what I saw at my visit. The appellant's SDs refer to various levels of domestic storage over the years, and also a very limited use of Building B for beauty therapy. However, the SD dated 27 May 2022 also states that it is the agricultural responsibilities and workload that predominate in driving the daily use and utility of the buildings.

24. From the evidence, I conclude that the various other uses that have undoubtedly taken place within the buildings, have never been at a level, or for a duration, which displaced the lawful use of the buildings for agriculture. At the time of my visit, they were being used solely for agricultural purposes. The SDs include details of the ongoing commercial grazing arrangement with Mr Cook, a successful application for Basic Payment entitlement from the Rural Payment Agency, and farm accounts lodged with HMRC for tax purposes. All of this provides sound evidence that Yeo Farm is an agricultural unit, and that the agricultural activity is being carried out as a trade or business. I therefore conclude that Buildings A and B are both agricultural buildings for the purposes of Class Q.

25. In arriving at my conclusions, I have had regard to the appeal decision[1] cited by the Council. However, that case differed from the one before me, in that it related to buildings that had not been used for agriculture since 2001. Consequently, any intervening uses would not have taken place alongside a primary and continuing agricultural use. This decision does not, therefore, alter my conclusion that, on the balance of probabilities, Buildings A and B were both solely in use for agriculture, for the purposes of a trade or business, as part of an established agricultural unit on 20 March 2013, and that they are currently agricultural buildings for the purposes of Class Q. Consequently, the permitted development rights in Class Q of the GPDO apply to both buildings.

Other Matters and Conditions

26. The Council's decision on the application that gave rise to Appeal B included a second reason for refusal, relating to the lack of mitigation for the increased recreational impacts on the Plymouth Sound and Estuaries Special Area of Conservation and the Tamar Estuaries Complex Special Protection Area. During the appeal, a Unilateral Undertaking (the UU) under Section 106 of the Act has been submitted that would secure a financial contribution to mitigating measures, prior to occupation of the dwelling. The Council has confirmed that the UU overcomes this reason for refusal. A similar Undertaking was completed prior to determination of the application under Appeal A.

27. In any event, Regulation 75 of the Conservation of Habitats and Species Regulations 2017 provides that it is a condition of any planning permission granted by the GPDO, that development which is likely to have a significant effect on a European site, alone or in combination with other plans or projects, must not be commenced until the developer has received written approval from the local planning authority under Regulation 77.

28. The appellant should also be aware that planning permission granted for the change of use of agricultural buildings to dwellinghouses under Schedule 2, Part 3, Class Q of the GPDO must be completed within a period of 3 years, starting with the date prior approval is granted, in order to comply with condition Q.2(3).

[1] Appeal Decisions APP/L3245/W/18/3213885 and APP/L3245/W/18/3213889

29. Schedule 2, Part 3, Paragraph W(12) of the GPDO states that, where prior approval is required, the development must be carried out in accordance with the details approved by the local planning authority. As I am allowing the appeal against the local planning authority's refusal of prior approval, I have, for the avoidance of doubt, imposed a condition requiring that the development be carried out in accordance with the approved plans.

Conclusion

30. For the reasons given above, I conclude that the appeals should be allowed, and prior approval granted.

Nick Davies

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/K1128/W/23/3320840	Mr Gareth Derrick
Appeal B	APP/K1128/W/23/3323793	Mr Gareth Derrick