



Appeal Decision

Site visit made on 5 March 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2024

Appeal Ref: APP/K0235/X/22/3303930

Freers Wood Farm, Pavenham Road, Carlton, Bedford MK43 7NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Herridge against the decision of Bedford Borough Council.
 - The application ref 22/00364/LDP, dated 16 February 2022, was refused by notice dated 20 June 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as *'Proposed development permitted by Schedule 2, Part 3, Class R of the Town and Country Planning, General (Permitted Development) Order 2015 as amended, 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 Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Use Classes Order'*.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. That application is the subject of a separate decision.

Preliminary matters

3. The Government's Planning Practice Guidance (PPG) provides advice relating to LDCs. It explains that an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
4. This proposal refers to a range of uses specified in Class R of Part 3 of Schedule 2 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO). Although the application refers to general classes of use as opposed to a specific use, that is a reflection of the particular characteristics of Class R and the 'flexible use' it describes. Thus, notwithstanding the need for precision set out in the PPG, an LDC could, in principle, be issued based on the flexible use described in Class R. Class R does

not make provision for operational development and the certificate the appellant seeks would be concerned only with the change of use.

5. The use classes specified in the application were out of date when the application was made and did not reflect Class R as it applied at that time¹. An accurate reflection of Class R would have referred to Class B8 (storage or distribution); Class C1 (hotels) and Class E (commercial, business or service). Nevertheless, while the use classes specified were wrong, the uses proposed are clear and are, in substance, the same as the uses referred to in the revised Class R. Had I been otherwise minded to allow the appeal and issue a certificate, I would have sought clarification on this point, with a view to amending the description. However, since the substance of the proposal is clear, and since the changes to Class R make no difference to my decision, I have determined the appeal without seeking to revise the description.

Main Issue

6. The main issue is whether the Council's decision to refuse the application was well-founded. This turns on whether the proposed change of use is development permitted by Class R (as it applied at the time of the application). This depends on whether the remains of a building on the site constitute a building to which Class R applies. The burden of proof falls on the appellant and the standard of proof is the balance of probability.

Reasons

7. Class R permits 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 a number of specified use classes. It follows that the site has to contain a building to which Class R can apply. The relevant parts of Paragraph R.1.(a) indicate that Development is not permitted by Class R if the building was not used solely for an agricultural use as part of an established agricultural unit on 3rd July 2012 or when it was last in use.
8. The appeal site contains the remains of a building referred to by the appellant as a former farmhouse. It is in a ruined state. It has no roof, is open to the elements and much of the walling has been lost. It is very overgrown and is well along the path of being blended back into the landscape. I have no information as to when it was last used. The Council queries whether it was, in fact, capable of being in sole agricultural use as part of an established agricultural unit.
9. The appellant argues that the remnants of the farmhouse are a building in accordance with the definitions at Section 336 of the 1990 Act and Article 2(1) of the GPDO. From these it is clear that 'building' includes any structure or erection, and any part of a building. The Courts² have provided further assistance in determining what may constitute a building. While it is clear that a farmhouse would be a building, the definitions do not deal explicitly with whether the ruined remains of a building such as these are a 'building'.

¹ Class R was modified by The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021

² See *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385; *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102; *R (oao Save Woolley Action Group Ltd) v Bath and North East Somerset Council* [2013] EWHC 2161 (Admin)

10. Nevertheless, it cannot be that a structure or erection must continue to be a building even after it has fallen into ruin and much of it is missing. To take the contrary view would result in the absurd situation that a pile of rubble or even a single brick could be said to be a building. In my judgement, and as a matter of fact and degree, the point at which the remnants of this farmhouse were a 'building' for the purposes of Part 3 of the GPDO is now in the past. Although the definitions of 'building' include 'any part of a building', that could be a reference to individual elements of a larger structure, as opposed to the remains of what was there before.
11. But even if what remains on the site could still be regarded as a building, I am not persuaded that it would be a building to which the proposed development could apply. The proposal is for a 'flexible use' which would include, for example, a hotel. It is quite obvious that the remains of this farmhouse could not be used as a hotel due to their ruined state. The only way to introduce a hotel onto the site would be to clear away the remains of the farmhouse and build a hotel. That would amount to the construction of a building, not the change of use of a building. The same would apply to the other uses proposed. Even if elements of what remains on the site could somehow be incorporated into a new building, they would nevertheless be overwhelmed by the new building operations required. Thus, as a matter of fact and degree, it would amount to a new building and not the change of use of an existing building. Consequently, it would fall beyond the scope of Class R.
12. I have been referred to an appeal decision³ where the inspector stated 'it is clear that an assessment of a proposal pursuant to Class R does not include a consideration as to the building's condition'. However, in this case it is more than simply a question of condition; much of the structure is missing, leaving only the remnants of the former farmhouse, as opposed to a building in need of repair. Quite simply, there is nothing useful left to which Class R could apply.
13. In another appeal decision⁴ the inspector concluded that 3 concrete pads were buildings and went on to grant prior approval in connection with a proposed flexible use falling within Class B8 (storage and distribution). However, such matters are fact sensitive. The proposal and structure were different in that case, and it may well be that the structure was capable of being put to the use proposed. Consequently, I find nothing in that decision to alter my view in this somewhat different case.

Other Matter

14. The appellant refers to the remaining structure as a farmhouse⁵. However, Class R is specifically concerned with the change of use of agricultural buildings. Paragraph X of Part 3 of Schedule 2 of the GPDO establishes that a dwellinghouse is not an agricultural building for the purposes of Part 3. On the face of it, therefore, the provisions of Class R could not apply to the structure in any event, since a farmhouse is a dwellinghouse and not an agricultural building. Had I been otherwise minded to allow the appeal, I would have sought clarification regarding the last use of the farmhouse, since it is not a matter addressed by either party. However, since the appeal is dismissed in any event for other reasons, I have not considered the matter further.

³ APP/K0235/W/21/3283941

⁴ APP/C3430/W/21/3272868

⁵ See appellant's Planning Statement and Appeal Statement

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended) and dismiss the appeal.

Peter Willows

INSPECTOR