



Appeal Decision

Site visit made on 8 May 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal Ref: APP/K1128/W/23/3335557

Higher Wizaller Farm, Hangmans Cross to Chillaton Cross, Modbury, Devon PL21 0SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and 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 Adam Hesse against the decision of South Hams District Council.
 - The application Ref is 2202/23/PDM.
 - The development proposed is conversion of existing agricultural barn into two dwelling houses.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The Planning Practice Guidance 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.
3. 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.
4. Q.1.(a) of the GPDO says 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 on 20th March 2013 (the relevant date), or 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.
5. 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. In this respect, Q.2.(e) is concerned with whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses).

6. The Council refused the application for prior approval for 2 reasons. Firstly, on the basis that the building has been used for a domestic ancillary use since it was last in an agricultural use. Thus, not permitted development. The Council does however not raise any concerns in respect of the other limitations set out in Q.1. This, in part, includes reasonably necessary building operations. The appellant's structural report is not disputed, and I find no reason to disagree that there would be compliance in this regard.
7. Secondly, the Council considered 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, it says, was due to a lack of information in respect of the effects on biodiversity.
8. Therefore, 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 and siting of the building and biodiversity.

Reasons

Whether permitted development

9. The appeal site comprises a large barn near a residential property and is claimed to serve 14 acres of pasture that is within the appellant's ownership. However, it is also submitted that the appeal building is redundant and does not form part of an agricultural holding. At my visit, I observed that the appeal building included some agricultural gates, machinery, and equipment. Additionally, there was a collection of logs, a large boat, and various water sports equipment. For these reasons, the building is currently not solely used for agriculture.
10. The evidence includes an undated photograph. It shows that the appeal building was likely to be used for cattle as part of an established agricultural unit until 2004, when the farm was sold. Whilst the new owners may have kept sheep in the appeal building for a short time, it is submitted that they stopped farming altogether. Although no dates are provided, there is little to demonstrate any trade or business within an established agricultural unit continued beyond 2004.
11. Accordingly, the appellant says that the appeal building became redundant. However, it is also claimed that the building was subsequently used for the storage of agricultural materials, farm machinery, fencing, a hay tedder, digger and for a friend to keep a caravan over the winter. It is conceivable that a caravan could be used for agricultural purposes. However, even if the caravan storage only formed a small part of the overall use of the appeal building, this

type of storage for a friend is more likely to be domestic, as opposed to being related to agriculture.

12. Whilst no substantive evidence has been provided, 3rd party representations claim the appeal building was used for caravan storage prior to the relevant date and beyond. This tallies with the appellant's submission. In any case, the evidence demonstrates that the appeal building was in use for a range of purposes, rather than being redundant.
13. In that context, there is no evidence of a formal application for the 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 on the relevant date. In the absence of any compelling evidence to the contrary, the probable caravan storage at the relevant date means that the building was in a mixed use that was not part of an established agricultural unit. Therefore, it cannot have been solely used for agriculture.
14. 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

15. As I have concluded that the proposal 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 transport and highways impacts, noise impacts, contamination risks and flooding risks. It would also not be necessary for me to determine whether biodiversity matters can apply to the location or siting of the building.
16. The appeal site is within the sustenance zone of The Greater Horseshoe Bat Special Area of Conservation. It 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, including the implications of Article 3(1) and Regulation 77.
17. I have paid regard to the appellant's comments in respect of living conditions and possible carbon reduction measures. However, any such benefits would not alter the outcome of the appeal.

Conclusion

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

J Hills

INSPECTOR