



Appeal Decision

Site visit made on 4 June 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2024

Appeal Ref: APP/P1425/W/23/3333092

The Bungalow, Newick Hill, Newick, Lewes BN8 4QR

- 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 Mr Percival Worsley against the decision of Lewes District Council.
 - The application Ref is LW/23/0404.
 - The development proposed is change of use of agricultural building to dwellinghouse (Use Class C3) and building operations reasonably necessary for the conversion.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for change of use of agricultural building to dwellinghouse (Use Class C3) and building operations reasonably necessary for the conversion at The Bungalow, Newick Hill, Newick, Lewes BN8 4QR in accordance with the application Ref LW/23/0404 and the details submitted with it, including drawing Nos TBNH002-01 Location plan, TBNH003-01 Proposed curtilage, TBNH004-01 Existing, TBNH005-01 Proposed, TBNH006-01 Proposed site layout, and TBNH007-01 Location plan of existing utilities, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q and subject to the conditions at the end of this decision.

Applications for costs

2. An application for costs was made by Mr Percival Worsley against Lewes District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application form includes a lengthy description of the proposed works. For brevity and clarity, I have used the description at the top of the application form in the banner heading and my decision above. The appellant has agreed this.
4. The provisions of Schedule 2, Part 3, Class Q were updated on 21 May 2024. However, I am required to determine this appeal in accordance with the GPDO provisions that were in force at the time the original application was submitted in July 2023. All references to the GPDO in this decision therefore relate to the version that was in force at that time.

5. The National Planning Policy Framework (the Framework) was updated in December 2023, during this appeal. However, insofar as the contents are relevant to this appeal, the Framework has not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the revised Framework.
6. The appellant submitted drawing No TBNH007-01 Location Plan of Existing Utilities, an updated Preliminary Ecological Appraisal (September 2023) (PEA), a Bat Emergence Survey (BES) and an updated Arboricultural Report (October 2023) (AR) with the appeal. These documents provide additional information but do not change the development applied for. The Council considered these documents before submitting its final comments. I am therefore satisfied no party would be prejudiced by my taking them into account in my decision.
7. The extent of the curtilage of the building in question in this appeal is defined by the red line shown on drawing No TBNH003-01. This is the extent of the land that would be subject to the change of use were I to allow the appeal.

Background and Main Issue

8. Under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO, planning permission is granted for development consisting of (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 to the Use Classes Order; and (b) building operations reasonably necessary to convert the building. Such permission is subject to limitations and conditions. These conditions include prior approval for the matters specified in paragraph Q.2(1).
9. The Council refused the application because it was not satisfied the requirements of paragraph Q.1 sub-sections (a) and (i) were met. However, it raised no concern with the other provisions under paragraph Q.1 and, on the evidence before me, I see no reason to disagree in this regard.
10. The Council also found the proposed development would not satisfy the prior approval matter at paragraph Q.2(1)(e).
11. The main issues in this appeal are therefore whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO; and, if so, whether it would satisfy the prior approval matters at paragraph Q.2(1).

Reasons

Would the proposed development be granted permission by the GPDO?

12. Under paragraph Q.1(a), 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 20 March 2013 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.
13. 'Site' is defined in GPDO Part 3 paragraph X as the building and any land within its curtilage. 'Agricultural building' means a building used for agriculture and which is so used for the purposes of a trade or business. 'Established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture. 'Agricultural use' is not defined in the GPDO, but section 336(1) of

Town and Country Planning Act 1990 (as amended) (the Act) sets out examples of agricultural activities.

14. The appellant states the building was granted permission in 1968 and has been used for about the last 35 years to store a tractor and other agricultural equipment. He also points to evidence of historic agricultural use of the building and wider unit within appeal decision reference APP/5206/A/80/91730, which was dismissed in March 1981.
15. In his report on that appeal, the Inspector found as matters of fact that the appeal site of some 10.3 acres was formerly part of a market garden, with traces of soft fruit cultivation remaining and evidence of a former piggery; and that it was classified as Grade 3 and Grade 2 agricultural land. These findings were consistent with evidence from the appellant at the time that he had worked the appeal site for the past 26 years as a market gardener/soft fruit grower and pig farmer, in conjunction with a greengrocery business.
16. The Inspector also described an access that “consists only of concrete wheel tracks which end at a former packing shed close to a pair of semi-detached bungalows”. Having regard to the full and detailed description of the site and wider area in the Inspector’s report, I am satisfied on the balance of probability that the former packing shed referred to is the building that is the subject of the current appeal. This is notwithstanding that the Council cannot find records of the building’s planning history. Having regard to the Inspector’s findings above, I am also satisfied the wider unit of which the building was a part in 1981 was an established agricultural unit at that time. Evidence of accounts or tax returns would not be a reasonable requirement in this instance because of the number of years that have passed and the weight I attribute to this historic appeal decision.
17. I observed during my visit that a tractor and other agricultural equipment are stored inside the building and appear to have been there for a considerable period. Consequently, although the building is in a poor state of repair, I do not find it to be abandoned because it is still in use as a place to store this equipment. It thus fails the second of the four tests for abandonment established in *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40.
18. Commentary on use of the building in the appellant’s Structural Report (SR) is of little consequence because that report is primarily intended to deal with structural matters. In the Kent appeal brought to my attention¹, the building in question had been unoccupied since a fire over twenty years previously, which is different to the circumstances before me.
19. I note DEFRA’s classification of the land surrounding the building as deciduous woodland. The list of agricultural activities in section 336(1) of the Act includes the use of land as woodlands where that is ancillary to the farming of land for other agricultural purposes. The evidence before me suggests woodland was present at the time of the market garden, and there is nothing to suggest an intentional change of use from agriculture to woodland has since taken place. Therefore, the DEFRA classification does not alter my finding above about the wider agricultural unit. The purpose of an Agricultural Holdings Certificate (AHC) is to ensure notification for those holding an agricultural tenancy, which

¹ Reference APP/M2270/W/22/3305766

is not a relevant consideration in this case. Therefore, the absence of an AHC is not determinative in this appeal.

20. There is no suggestion the building has been used for any other purpose since it was erected.
21. Taking all this together, I am satisfied the building was used solely for agricultural use as part of an established agricultural unit when last in use, whether or not the site was in that use on 20 March 2013. I therefore find the proposal meets the requirements of paragraph Q.1(a).
22. Paragraph Q.1(i) excludes from Class Q(b) building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out the building operations allowed.
23. According to Planning Practice Guidance² (PPG), the Class Q permitted development right assumes the agricultural building is capable of functioning as a dwelling and is therefore already suitable for conversion to residential use. For the building to function as a dwelling it may be appropriate to undertake internal structural works, which are not prohibited by Class Q.
24. The SR finds the building is in reasonably good condition for its age and form of construction, despite an obvious lack of maintenance for at least the last 30 years. This includes lower block walls in very good condition, straight and plumb; and concrete strip foundations that have been adequate and fit for their purpose although not compliant with current regulations. The SR finds the building has not suffered any long-term distortion, leaning or racking, despite corrosion to exposed elements of the main steel framed structure. It concludes the building is structurally viable for conversion. From my observations on site, I see no reason to disagree with these findings.
25. Works recommended for the proposed conversion include removal of asbestos sheeting and debris, renewal of much of the floor, replacement of rusting sections of the steel frame structure, and new wall cladding and roof sheeting along with cross and diagonal bracing. Possible additional works to comply with current Building Regulations include underpinning of the foundations and strengthening of purlins and cladding rails.
26. I acknowledge parts of the building are in poor condition. Nevertheless, there is no alternative survey before me or other compelling evidence to demonstrate the conclusions and recommendations of the SR are incorrect or unreliable. This is notwithstanding that the SR surveyor was not able to stand inside the building. Although walls and roof cladding would be replaced, the lower block walls would not need to be demolished. The building's steel frame would be only partially replaced and reinforced. These works would amount to no more than partial demolition and internal structural works and the removal and replacement of asbestos and renewal of the floor are works that are reasonably necessary for the building to function as a dwellinghouse. Therefore, on the evidence before me I find the building is suitable for conversion to residential use and the proposed works would fall within those permitted under Class Q(b) of the GPDO.

² Paragraph: 105 Reference ID: 13-105-20180615 (revision date 15 06 2018)

27. Although works to foundations are not listed in the description of reasonable works in the PPG, this does not preclude me finding them reasonable as a matter of judgement based on the circumstances before me. I understand underpinning may be required because of the clay soil and nearby trees. This would be reasonable given the original asbestos cladding is harmful to health and would need to be replaced by materials that may be heavier. Such works would not amount to the significant structural support or rebuilding suggested by the Council.
28. In the Dunley appeal brought to my attention³, no investigation of existing foundations involving trial pits had been undertaken. That is different from the current scheme, in which three trial pits were dug prior to the survey. Therefore, the circumstances in that appeal are not directly comparable to those before me. I have determined this appeal on its individual merits.
29. I therefore find the proposal amounts to a conversion of the agricultural building and the works proposed satisfy the requirements of paragraph Q.1(i).
30. For the above reasons, I conclude the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO.

Prior approval matters

31. Paragraph Q2(1)(e) requires prior approval as to whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse.
32. The Council considers the ecological value of the site and surrounding area, and resulting landscape sensitivity, make the proposal undesirable. This is because the appeal site is within the zone of influence of the Ashdown Forest Special Area of Conservation (SAC), within deciduous woodland, which is a priority habitat, and close to a Site of Special Scientific Interest (SSSI) and a Local Wildlife Site known as Newick Common.
33. The SAC is a European site protected under the Conservation of Habitats and Species Regulations 2017 (the HR). The proposal, particularly when combined with other development in the area, would be likely to have a significant effect on the SAC through increased recreational activity.
34. Any grant of planning permission under Article 3(1) of the GPDO is subject to compliance with regulations 75 to 78 of the HR. Together, these provisions operate to impose a pre-commencement condition on development permitted by the GPDO that would affect a European site. Permitted development cannot be lawfully begun until the developer has made an application to the local planning authority (LPA) under regulation 77 of the HR and received written notification from the LPA that the development would have no adverse effect on the integrity of the European site. As the regulation 77 application can be submitted and assessed after the grant of prior approval, I do not need to consider this matter further as part of this appeal.
35. In the other Newick appeal brought to my attention⁴, the development in question required express planning consent rather than prior approval under

³ Reference APP/J1860/W/20/3263591

⁴ Reference APP/P1425/W/23/3326376

the GPDO. Therefore, it fell to the Inspector as the responsible authority to carry out the appropriate assessment, and the absence of adequate mitigation for identified harm to the integrity of the European site resulted in dismissal of the appeal. The circumstances in the current appeal are different for the reasons outlined above.

36. The PEA finds the woodland surrounding the site offers suitable habitat for badgers and a range of birds, although the building itself has low suitability for bats with no evidence of them emerging during the BES. There is no suggestion in the PEA that the development would be likely to have an adverse effect on the SSSI or Newick Common and there is no other evidence that is sufficiently compelling to lead me to a different conclusion.
37. The PEA recommends biodiversity mitigation measures through a Construction Environmental Management Plan (CEMP), which could be secured by condition were the appeal to be allowed. The CEMP would include emergency procedures to be followed in the event of unexpected findings during works, such as if bats were found to be present. The PEA also recommends the provision of bat and bird boxes to enhance the ecological value of the site.
38. The findings and recommendations of the PEA are sufficiently comprehensive for me to be satisfied the risk of harm to protected species and habitats could be adequately mitigated, alongside modest proposed enhancement measures. Furthermore, the AR recommends an Arboricultural Method Statement, which would mitigate the risk of harm to the woodland surrounding the appeal site and could also be secured by condition were the appeal to be allowed.
39. In the Shropshire appeal brought to my attention⁵, the Inspector could not be satisfied of the effect of the proposed development on protected species because no ecological surveys had been provided. Consequently, the circumstances in that appeal are not directly comparable to those before me.
40. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, Policies CP10 and DM24 of the Lewes District Plan Parts 1 and 2 (LDP) are material considerations and require the conservation and protection of biodiversity, including through conditions to ensure mitigation, site management and enhancement measures. The Framework is also a material consideration and seeks adequate mitigation for any significant harm to biodiversity, including sites protected under the HR. Insofar as they are material considerations, the proposal would comply with these Policies for the reasons I have outlined.
41. Taking all this together, I find the ecological value of the site and sensitivity of the surrounding area do not make the proposed development undesirable. Prior approval matter Q2(1)(e) is therefore satisfied in that regard.
42. Concerns have been raised about a range of other locational factors that could make the proposed development undesirable. These include building in the countryside, loss of open space, the effect of the development on a nearby Area of Outstanding Natural Beauty (now National Landscape) and the historical significance of the site. The Council has not found any of these factors

⁵ Reference APP/H1840/W/15/3004467

would make the proposed development undesirable. On the evidence before me I see no reason to reach a different conclusion.

43. The other prior approval matters in paragraph Q2(1)(a) to (d), (f) and (g) relate to transport and highways, noise, contamination, flooding, design or external appearance, and the provision of adequate natural light in all habitable rooms. The Council raises no concern in respect of these other matters, subject to suggested conditions, which I will consider later in my decision. On the evidence before me I see no reason to take a different view to the Council. I therefore find the proposal would comply with the prior approval matters in paragraph Q2(1)(a) to (d), (f) and (g).
44. For the above reasons, I conclude the proposed development would satisfy the prior approval matters at paragraph Q.2(1).

Other Matters

45. The proposal's effect on the privacy, outlook and light of neighbouring occupiers is outside the scope of matters that can be considered in this case. Any permissions required under other regulatory regimes are also outside my remit in considering this appeal.
46. There is no pertinent evidence to substantiate the suggestions that the Council erred in its notification procedures, or that work on the proposed development has already commenced.

Conclusion and conditions

47. For the reasons given above, I conclude the appeal should be allowed and prior approval is granted subject to conditions.
48. Paragraph Q.2 (3) of Schedule 2, Part 3, Class Q requires the development to be completed within a period of 3 years starting with the date of this decision. In addition, paragraph W (13) states prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. The additional conditions are set out in the schedule at the end of this decision.
49. The conditions relating to parking and cycle parking are reasonable and necessary for highway safety and to promote cycling. There is no compelling evidence to persuade me a construction management plan is necessary and, given the modest scale of the proposed development, such a condition would not be reasonable. Electric vehicle charging is covered by another regulatory regime, so a condition in this regard is not necessary.
50. The condition to mitigate contamination risks is reasonable and necessary given the previous use of the site and the presence of asbestos. Conditions requiring approval of materials samples and details of refuse storage are reasonable and necessary to secure a satisfactory external appearance for the building. However, the suggested condition relating to landscaping is not necessary because of the limited extent of the site curtilage.
51. As noted above, the development cannot begin until the developer has been notified by the LPA that the development would have no adverse effect on the integrity of the SAC. The additional conditions below relating to biodiversity and

trees are reasonable and necessary for the reasons outlined under prior approval matters. This includes a pre-commencement condition to secure a CEMP so that risks to biodiversity and protected species are mitigated before development begins. The appellant has given his written agreement to this pre-commencement condition.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall include:
 - i) a risk assessment of potentially damaging construction activities;
 - ii) identification of biodiversity protection zones (e.g. badger setts and associated buffer zones);
 - iii) identification of practical measures to avoid biodiversity impacts during construction, including use of exclusion fences, protective barriers and warning signs;
 - iv) method statements to mitigate risks from construction to protected species and biodiversity;
 - v) pollution prevention measures to be adopted during works, including measures to control lighting during construction;
 - vi) the location and timing of sensitive works to avoid harm to biodiversity features;
 - vii) emergency procedures to be followed in the event of unexpected findings during works; and
 - viii) responsible persons and lines of communication, including the role and responsibilities on site of an Ecological Clerk of Works (ECoW), or appointed ecologist(s) responsible for managing biodiversity issues on site, and times and activities during construction or development implementation when they need to be present.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 2) The development hereby permitted shall be carried out in accordance with the Arboricultural Method Statement and Tree Protection Plan within the Arboricultural Report, by Andrew Martin, dated 23 October 2023. The Arboricultural Method Statement and Tree Protection Plan shall be adhered to throughout the construction period for the development.
- 3) Any contamination found during construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

- 4) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved samples.
- 5) Prior to occupation of the development hereby permitted details of refuse storage areas shall be submitted to and approved in writing by the local planning authority. The refuse storage areas shall be completed in accordance with the approved details before the building is occupied and shall thereafter be retained for the storage of refuse.
- 6) Prior to occupation of the development hereby permitted details of cycle parking areas shall be submitted to and approved in writing by the local planning authority. The cycle parking areas shall be completed in accordance with the approved details before the building is occupied and shall thereafter be retained for the parking of cycles.
- 7) The development hereby permitted shall not be occupied until vehicle parking areas have been provided in accordance with the approved plans. Thereafter those area shall be retained for the parking of vehicles only.
- 8) The development hereby permitted shall not be occupied until the biodiversity enhancement measures recommended in section 6 of the Preliminary Ecological Appraisal Report, by Elton Ecology, dated 29 September 2023, have been installed. The biodiversity enhancement measures shall thereafter be retained.

End of schedule