



Appeal Decision

Site visit made on 12 July 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2024

Appeal Ref: APP/E2001/W/24/3341036

Land at West End, Luck Lane, Preston, East Riding of Yorkshire HU12 8TE

- 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 Fortnum against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/02896/AGRNOT.
 - The development proposed is 1 x 1 bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council issued its decision, the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2024 has come into force. However, the transitional arrangements apply to the proposal and therefore, it is subject to the previous version of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO').

Main Issue

3. The main issue is whether the proposed development would be permitted development under Schedule 2, Part 3, Class Q of the GPDO.

Reasons

4. The appeal site is a rectangular-shaped piece of land that largely consists of a paddock. Sited on the land is a rectangular-shaped single storey building which, at the time of my site visit, was used partially in connection with a small number of alpacas but also for the storage of building materials such as scaffolding poles and domestic items such as furniture and bicycles. An area adjacent to the existing building was used for the storage of building equipment and materials including scaffolding, a JCB digger on a trailer, insulation panels etc.
5. Schedule 2, Part 3, Class Q of the GPDO 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 use falling within Class C3 (dwellinghouses) of the Use Classes Order¹ and any building operations necessary to convert the building.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Curtilage

6. Paragraph X of Schedule 2, Part 3 of the GPDO defines 'curtilage' for the purposes of Class Q as the lesser of: *"(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building"*.
7. The Council state that the floorspace of the existing building is between 65-75sqm. The curtilage shown on the Proposed Site Plan² is smaller than the site edged red. However, according to the Council it would encompass over 1500sqm, which is not disputed by the appellant. Furthermore, the curtilage depicted on the drawing differs from my observations on site.
8. The curtilage of the appeal proposal would include an extensive parcel of land that is not immediately beside or around the existing building and it would significantly exceed the land area occupied by the agricultural building, which is the lesser figure. Consequently, it would not comprise permitted development.

Agricultural Use

9. Paragraph Q.1 of Schedule 2, Part 3 of the GPDO sets out a number of exclusions where development is not permitted including *"(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, or*
 - (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins"*.
10. Paragraph X of Schedule 2, Part 3 of the GPDO defines 'agricultural building' as *"a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, and 'agricultural use' refers to such uses"*.
11. The appellant's planning application form states that the appeal site complies with paragraph Q.1(a)(i) as it was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. The appellant asserts that the building has always been used for the breeding and rearing of alpacas. I witnessed a small number of alpacas on the adjacent paddock at the time of my site visit. However, I am uncertain from the information before me, whether they are used for the purposes of an agricultural trade or business.
12. Consequently, from my own observations and the evidence before me, I am not persuaded that the land/building was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. Consequently, it would not comprise permitted development.
13. Notwithstanding this, planning permission was granted³ in 2008 for the construction of the appeal building for equestrian purposes. It was conditioned to be used for the private keeping of horses only and not for any commercial or livery purposes. The appellant's assertion that the building has *"always been*

² Drawing Ref 4106/P4

³ Planning Ref 08/01355/PLF

used for the breeding and rearing of alpacas” means that the building has been used unlawfully since it was constructed.

14. Article 3(5) of the GPDO provides that the planning permissions granted by Schedule 2 of the GPDO do not apply if the building operation or use is unlawful. Therefore, even if the building is now immune from remedial action under planning law, it would seem that no permitted development rights can be claimed in connection with the appeal building that has been constructed.

Prior Approval

15. The Council also raise concern regarding whether the proposal would comply with paragraph Q.2(1)(d) of Schedule 2, Part 3 of the GPDO in respect of flooding risks on site. Given my conclusions above, it is not necessary or appropriate for me to go on to consider whether prior approval is necessary.

Conclusion on the Main Issue

16. In reference to the main issue, the proposal would not be permitted by Schedule 2, Part 3, Class Q of the GPDO.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

A Berry

INSPECTOR