



Appeal Decision

Site visit made on 13 January 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 February 2025

Appeal Ref: APP/R1038/W/24/3349482

Hilltop Farm, Derby Road, Clay Cross, Derbyshire S45 9AG

- 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 and Mrs Bob and Laura Vardy against the decision of North East Derbyshire District Council.
 - The application Ref is 24/00109/CUPDMB.
 - The development proposed is described as 'prior approval / change of use through Class Q permitted development of agricultural barns to 2 residential dwellinghouses'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 21 May 2024, Statutory Instrument 2024 No. 579 (SI No. 579) came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). In line with transitional arrangements, I have proceeded to determine the appeal in accordance with the GPDO provisions that were in force at the time that the application was submitted in February 2024. All references to the GPDO in this decision therefore relate to the version that was in force at that time. The Council's appeal statement incorrectly applies SI No. 579 to the appeal proposal. Even so, I have had regard to the contents of this statement insofar as they are relevant to the GPDO and the matters in dispute.
3. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Background and Main Issue

4. 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 Schedule to the Use Classes Order, together with building operations which are reasonably necessary to enable the conversion of the building. This is subject to various limitations and conditions as set out in paragraphs Q.1 and Q.2 of that Class.

5. The GPDO is clear that the local planning authority may refuse an application where, in the opinion of the authority – (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, the conditions, limitations or restrictions set out in paragraphs Q.1 and Q.2.
6. The Council contends the development is not permitted development under Class Q(b) in relation to the proposed curtilages. Furthermore, it considers the last use of the buildings was not solely in agricultural use and the proposed operational works to be above and beyond what could be considered to be reasonably necessary to enable the buildings to function as a dwellings and thereby it would not meet the requirements of Class Q(b) due to the limitations specified under Q.1(a) and Q.1(h) and (i).
7. The main issue is therefore whether the proposal would be permitted development under Schedule 2, Part 3, Class Q.1 of the GPDO having particular regard to:
 - whether the extent of the proposed curtilages of the buildings meet the requirements of Class Q(b).
 - whether the last use of the buildings was solely as an agricultural use as part of an established agricultural unit, in respect to Q.1(a); and
 - whether the proposal would result in the external dimensions of the buildings extending beyond the external dimensions of the existing buildings and for building operations reasonably necessary to convert the buildings to a dwellinghouses in respect to Q.1(h) and (i).

Reasons

Whether permitted development

Curtilages

8. The appeal buildings relate to Barn 3 and Barn 4 and form part of a group of buildings at Hilltop Farm. The Proposed Site Plan (Drawing Ref: HTF-MJB-INF-6012) indicates a curtilage serving each barn would be equal in size to the footprint of each building. As a consequence, the proposed curtilage associated with each building would not cover an area greater than that covered by the barns themselves which would be in accordance with the Schedule 2, Part 3, Paragraph X of the GPDO (Paragraph X) definition of curtilage.
9. The land required for parking spaces intended to serve the proposed dwellings, including for visitors, does not fall within the proposed curtilage. A change of use of the land to use for residential purposes may require a separate grant of planning permission.
10. Notwithstanding the assessment of agricultural use below, the extent of the proposed curtilages of the appeal buildings would meet the requirements of Class Q(b).

Agricultural use

11. The requirement of Paragraph Q.1(a) of the GPDO is that the site must be used solely for an agricultural use as part of an established agricultural unit. Any other

use which is not agricultural either on 20 March 2013 or when the buildings were last in use would mean the site was not solely in agricultural use.

12. At the time of my site visit, the appeal buildings were largely unused, with some storage of miscellaneous items associated with the use and maintenance of the wider site present. Even though the buildings are in a poor state of repair, the appellant has confirmed that items including tractors, trailers, gardening, grass cutting machinery, storage boxes and waste have been stored in the appeal buildings. Whilst photographs provided by the Council show domestic items stored within Barn 3, the same items were not evident at the time of my site visit. Even so, the other items listed do not in any event, meet the definition of “agricultural use” set out in Paragraph X which refers to the use of an agricultural building for the purposes of a trade or business.
13. The appellants purchased the site in 2021 and occupy the main farmhouse as a dwellinghouse. They have confirmed that they do not use the appeal site for agricultural purposes and that the surrounding agricultural land is now in separate ownership. It has been suggested that the previous owners of the site similarly did not use the appeal site for agricultural purposes. There is no dispute between the main parties that the appeal buildings were used solely for an agricultural use as part of an established agricultural unit, likely in association with the unit shown in the historical farm plans submitted with the appeal, at some point in the past. However, the Council suggest that this is likely to have last occurred sometime before 2001. The appellant has submitted copies of records indicating a business operated from the site between 1991 and 1995 although a specific date or evidence to demonstrate when the barns were last in agricultural use has not been provided.
14. A significant period of time has passed since the appeal buildings were last in agricultural use and there is limited information before me regarding the use of the appeal buildings since it was last in agricultural use, particularly in relation to use by the previous owners of the site. The appellant suggests that any ‘storage’ which may have taken place within the barns in the past was on a temporary basis and that this would not result in a change of the lawful use of the appeal buildings. However, if storage has occurred since the buildings were last in agricultural use whether or not on a temporary basis, if this temporary storage has taken place over a prolonged period then this may now represent the last use of the appeal buildings. Moreover, a lawful development certificate to confirm that the appeal buildings remain in agricultural use does not exist. As a consequence, the evidence before me does not support the assertion that the buildings were last in agricultural use as part of an established agricultural unit.
15. It has not therefore been demonstrated the last use of the buildings was not solely as an agricultural use as part of an established agricultural unit, in respect to Q.1(a).

Building operations

16. Paragraphs Q.1(h) and (i) of the GPDO sets out that development under Class Q(b) is not permitted if it would result in the external dimensions of the building extending beyond those existing, or consist of 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.

17. The Planning Practice Guidance ('PPG') states that the right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. While as set out above, the right permits building operations reasonably necessary to convert the building, it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use.
18. There is no definition to the term 'reasonably necessary' within either the GPDO or PPG, and this is a matter of planning judgement based on the fact and degree of each case. The parties have referred to Hibbitt¹ which considered whether works required to bring about a change of use amount to re-build or 'fresh' build as opposed to conversion. The case reinforces that is a matter of planning judgement, however the building should be capable of conversion without new structural elements, and the existing building should be capable of bearing loading from external works.
19. The appellant's Structural Feasibility Assessment suggests that both Barn 3 and 4 are in a poor state of repair with Barn 3 experiencing an outward lean to its rear elevation and Barn 4 experiencing vertical/stepped cracking. It suggests that there are aspects of the building structures at the end of their life and further investigation is required in order to inform the detailed design of the proposal. There are no calculations before me to suggest the existing walls could take the load bearings of the new roofs without significant intervention.
20. Part of Barn 4 has a collapsed roof and only the remains of the walls of this part of the building now exist. The Council suggests that the proposed new roof with gable wall shown on the proposed plans would not match the previous roof and wall that existed on the original building. Whilst historical elevations and plans have been submitted, they do not provide sufficient confirmation that works are limited to repairs. Even if they did, this installation of the new roof and wall would comprise a new structural element and that would result in an extension beyond the existing external dimensions of the building. Furthermore, the proposed plans clearly indicate that the flat roof/lean-to section of Barn 3 would be raised higher than its existing height to form a porch.
21. The appellant has made reference to the potential of amending the plans to remove the proposed porch from Barn 3 and to alter new roof proposed on part of Barn 4. However, no alternative drawings are before me and I am obliged to determine the appeal proposal based on the plans considered by the Council when it made its decision.
22. The proposal would therefore result in the external dimensions of the building extending beyond the external dimensions of the existing building and building operations go beyond those reasonably necessary to convert the buildings to dwellinghouses in respect to Q.1(h) and (i).

Summary

23. I conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class Q of the GPDO. On this basis, it is not considered necessary to consider the prior approval matters set out Q.2 of that Class.

¹ *Hibbitt and another v SSCLG (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 Admin

Other Matters

24. My attention has been drawn to an appeal decision for an application under Class Q of the GPDO for a barn at Great Mountains Farm in Essex (Appeal ref: APP/X1545/W/18/3198348). However, I do not have full details of the circumstances that led to this decision and so cannot be sure that it represents a direct parallel to the appeal proposal, including in respect of use of the appeal buildings. In any case, I have determined the appeal on its own merits.
25. The appellant indicates the Council's concerns regarding the agricultural use of the buildings and proposed building operations did not form part of its reason for refusing a previous application for prior approval for the change of use of agricultural buildings on the appeal site and wider site to 5 dwellinghouse (Council ref: 23/00199/CUPD). However, I understand that this was in part due to new evidence being provided to the Council which was not before it when it considered the previous application for prior approval. In any case, I have reached my own conclusions on the appeal proposal on the basis of the evidence before me.
26. Any concerns relating to any alterations to other buildings on the wider farmstead did not form part of the Council's decision and this does not alter my findings with regards to the main issue.

Conclusion

27. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR