
Appeal Decision

Site visit made on 4 March 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

Appeal A Ref: APP/Z1510/W/24/3347822

The Barn, Tumblers Green, Stisted, Essex CM77 8AZ

- 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 Mark and Kathryn Hughes against the decision of Braintree District Council.
 - The application Ref is 23/02875/COUPA.
 - The development proposed is the change of use of agricultural building to a dwellinghouse (Class C3) and for associated operational development.
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Appeal B Ref: APP/Z1510/W/24/3352667

The Barn, Tumblers Green, Stisted, Essex CM77 8AZ

- 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 Mark and Kathryn Hughes against the decision of Braintree District Council.
 - The application Ref is 24/00177/COUPA.
 - The development proposed is the change of use of agricultural building to a dwellinghouse (Class C3) and for associated operational development.
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Decision

1. Both appeal A and appeal B are dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs Mark and Kathryn Hughes against Braintree District Council. This application is the subject of a separate decision.

Preliminary Matters

3. As set out above there are two appeals on this site. They do not differ in design and are supported by the same plans. However, the reasons for refusal provided by the Council are different for each. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. From 6 April 2018 to 21 May 2024, 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 (GPDO), development is permitted for the change of use of a building and any land within its curtilage, from use as an agricultural building to a use falling with Class C3 (dwellinghouses) together with

building operations reasonably necessary to convert that building, subject to limitations and conditions. Any prior approval application or appeal which was made before 21 May 2024 in respect of the 'old' Class Q should be determined in that basis.

5. The Council may refuse the application where it considers that the proposed development does not comply with, or that the developer has provided insufficient information to enable the Council to establish whether the proposed development complies with the conditions, limitations or restrictions set out in paragraphs Q.1 and Q.2.

Main Issue

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

Reasons

7. The appeal site is occupied by a large building which the appellant claims was last used for agricultural purposes. This use appears to comprise the small-scale production of cider from a crop grown on the surrounding land. The appeal site includes a long access track from the road and a small area around the building itself.
8. Paragraph Q.1 (a) of the GPDO states 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 (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.
9. S336 (1) of the Town and Country Planning Act 1990 as amended states that agriculture includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.
10. From this definition, the growing of apples on the surrounding land would constitute an agricultural use. In *Millington v SSETR* [1998] EGCS 154, the instinctive view was that the making of wine, cider or apple juice was a perfectly normal activity for a farmer engaged in growing wine grapes or apples. As such, it is reasonable to consider that the appeal building falls under the definition of an agricultural building. Whilst this was the sole reason for refusal in appeal A, in appeal B the Council found that the building did fall under the definition of an agricultural building.
11. However, Article 3(4) of the GPDO states that 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.'

12. It has been outlined that condition 3 of the original planning permission¹ to develop the site and condition 10 of the amended scheme² stated that 'The building hereby permitted shall be used solely in association with the produce grown on the site and maintenance of the land unless otherwise agreed in writing by the local planning authority.' The reason for the condition is stated as the site lies in a rural area where development other than for agricultural purposes is not normally permitted. However, the appellant highlights part of the Council's report of the original planning permission which states that such a condition is necessary to control its use and to prevent imported products being processed on the site.
13. Nevertheless, the development proposed, which the appellant considers would be permitted under Schedule 2, Part 3, Class Q of the GPDO, would clearly be contrary to the wording of condition 3 of the original planning permission and condition 10 of the amended scheme which restricts the use of the building. This is supported by the specific reason for the condition stated in the decision, which outlines that in this rural area development other than for agricultural purposes is not normally permitted. In accordance with the wording of the condition, planning permission is required for a proposed change of use and that can only be granted on application made to the local planning authority in the first instance.
14. The appellant considers that the condition imposed on the original planning permission and the amended scheme is imprecise as it does not specifically reference the GPDO. However, the condition was still imposed preventing the use of the building for any other purposes other than in association with the produce grown on site and maintenance of the land and therefore, it still limits the use of the building proposed in those applications.
15. In appeal B it is raised by the Council that the curtilage of the proposed development is not clearly defined and that the land within the red line boundary, excluding the access, would exceed the footprint of the building, contrary to the definition of curtilage within paragraph X of the GPDO. However, there is no obligation under Class Q for the appellant to include any land within the change of use. Nonetheless, the red line boundary on the submitted location plan for both appeals includes some land around the building and the access to the main road.
16. Due to its scale, the land within the red line boundary would not meet the definition of curtilage within paragraph X. However, the appellant has identified an area to the side of the building, shown as a hatched area on the block plan submitted for both appeals, to be used as an outdoor amenity area which excludes the access and parking area within the red line boundary. This area, immediately beside the agricultural building and no larger than the land area occupied by the agricultural building, would meet the definition of curtilage within paragraph X. Therefore, as long as the decision makes the extent of the curtilage clear so it is apparent which land is subject to the permitted change of use, this would not form a reason as to why the proposal in both appeals is not permitted development.
17. However, having regard to all of the above, I conclude that the proposed development in both appeal A and appeal B would be contrary to Article 3(4) of the GPDO and so would not constitute permitted development under Schedule 2, Part 3, Class Q of the GPDO.

¹ 12/00185/FUL (the original planning permission)

² 13/00482/FUL (the amended scheme)

Other Matters

18. Whilst the Council's two reasons for refusal in appeal B were not identified in appeal A, it is still necessary to take them into consideration for both appeals when considering whether the proposed development would constitute permitted development under the GPDO. Therefore, whilst I understand the appellants frustrations that these points of contention were not identified at an earlier stage, it does not alter my overall findings in both of these appeals.

Conclusion

19. Therefore, for the reasons given above and based upon the evidence before me, I conclude that the proposal in appeal A and appeal B is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Therefore, appeal A and appeal B are dismissed.

E Grierson

INSPECTOR