



Appeal Decision

Site visit made on 9 April 2025

by A Knight BA PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2025

Appeal Ref: APP/A1530/W/25/3358600

37 Straight Road, Boxted, Colchester, Essex CO4 5HN

- 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 Pearl against the decision of Colchester City Council.
 - The application Ref is 242003.
 - The development proposed is Class Q Prior Approval Barn Conversion to Residential using existing barn located to the rear of 37 Straight Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to a barn (the barn) at 37 Straight Road (the site). The application describes the site as part of an established agricultural unit. As such, Class Q(a)(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) is pertinent. It permits development consisting of a change of use of a building that is part of an established agricultural unit and any land within that building's curtilage to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order, together with the extension of the building or building operations reasonably necessary to convert it.
3. The procedure for applications for prior approval allows the local planning authority to refuse an application if it considers the developer has provided insufficient information to enable it to establish whether the proposed development complies with any applicable conditions, limitations or restrictions¹.
4. The decision notice is devoid of any indication as to the reasons for refusal, or how they might be obtained. The Council planning officer report cites insufficient information to establish that the barn is part of an established agricultural unit. The Council repeats this in its subsequent appeal statement, but adds that the curtilage of the building is too large to comply with the requirements of Class Q. The appellants became aware of the reason for refusal upon receipt of the Council's appeal statement and addressed it, as well as the Council's subsequent comments regarding the curtilage of the building, in their final comments.
5. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme; What is considered by the Inspector should be

¹ Paragraph W of Part 3 refers.

essentially the same as was considered by the Council and interested parties at the application stage. Any further submissions made during an appeal must be considered in the context of whether they involve a substantial difference or fundamental change to the proposal causing unlawful procedural unfairness to anyone involved.

6. Though the Council's reason for refusing the application was omitted from its decision notice, that reason had nevertheless been articulated. The curtilage of the building was not a reason for refusal, it has been added subsequently. It is therefore not reasonable for me to consider the Council's submissions on the issue in my determination. In line with this approach, I cannot reasonably consider the appellant's counterarguments.
7. At the same time, I must consider whether the proposed development complies with the requirements of Class Q of the GPDO, and assessing the curtilage of the building is a fundamental part of doing so. Given the circumstances, I will proceed to consider the curtilage of the building, but without regard to any argument advanced by either party in that respect.
8. The appellant's final comments include an explanation of the site's historical and current agricultural use and evidence aiming to show its registration as an agricultural holding (the new information). This was not within the original application and has the potential to amount to a substantial difference between the information before me and that which the Council considered.
9. I recognise the role played by the omission of a reason for refusal on the decision notice in the appellant's submission of the new information. Even so, the Council and any interested third parties have not had a chance to comment on it. In making my determination, I have not considered the new information as it would result in unlawful procedural unfairness.

Main Issues

10. Taking all the above into account, the main issues in this appeal are (i) whether the information supplied is sufficient to establish that the barn is part of an established agricultural unit and, if so, (ii) whether the extent of its curtilage would be greater than permitted.

Reasons

An established agricultural unit.

11. The site includes a semidetached dwelling at 37 Straight Road (the house) along with a section of land alongside it upon which the barn is located (the section). The appellants describe the site as part of a smallholding and show it alongside a wider field within their ownership (the wider field).
12. Planning permission for the barn was granted in 2003². It was described as a 'Hay/machinery barn' and the relevant planning officer report cites the 'applicants wish to erect a storage barn which is directly related to their use of the land adjacent to their house for hay and the keeping of geese/chickens'. In 2024

² Application Ref COL/03/1915.

planning permission was granted³ for an 'Outbuilding/barn' on the wider field (the new barn).

13. The pertinent definition⁴ of an 'established agricultural unit' is agricultural land occupied as a unit for the purposes of agriculture on or before 20th March 2013 or for 10 years before the date the development [permitted by Class Q of the GPDO] would begin. The Planning Practice Guidance (PPG) states that the site must have been used *solely* for an agricultural use [my emphasis].
14. The term 'agriculture' is defined⁵ as including, but not being limited to, 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.
15. In addition, the appeal proposal can only be permitted by Class Q if the site was part of an established agricultural unit on 24th July 2023 or, if it became part of it after 24th July 2023, for a period of at least 10 years before the proposed development.
16. I see no reason why the storage of hay and machinery associated with it, along with the keeping of poultry birds cannot be accommodated within the definition of agriculture, or that the barn was approved for anything other than agricultural use. A Tier 1 Desk Study Report by Richard Jackson Ltd (October 2024) (the desk study) was submitted with the application by the appellant. It includes a series of historic aerial photographs providing indications of arable use of the wider field, most notably on 26/06/1999 and 18/07/2016, where uniform track lines are distinguishable. These factors indicate that agricultural use may have been made of the site.
17. Even so, at no point in the appellants submissions is the use of the site on any of the operative dates, or the role therein of the barn, explained, much less demonstrated. Moreover, the submissions give rise to doubts that the site and the barn have been used *solely* for agriculture; The desk study describes use for the storage of old cars and car parts such as engines, body panels and tyres together with other miscellaneous items including furniture, doors, bikes and timber. Parts of the section are described as horse paddocks. These observations are supported by photographs, and the Council officer report contains similar images.
18. In my site visit I observed, within the section, the storage of old cars, car parts and tyres together with other miscellaneous items, as well as the use of land within the section as horse paddocks. There was no indication of agricultural activity on the wider field. My site visit is only a snapshot in time, but it did not identify the site as being in agricultural use.
19. In respect of the barn specifically, photographs of it apparently being used for non-agricultural storage, which are provided in both the desk study and the Council officer report, are explained by the appellants as the temporary consequence of the erection of the new barn on the wider field. However, there is little to explain

³ Application Ref 240259.

⁴ GPDO, Interpretation of Part 3, paragraph X, refers.

⁵ Town and Country Planning Act 1990 (As Amended), s336, refers.

why the latter would result in the former and, in any event, the evidence does not demonstrate agricultural use.

20. The use of the barn as part of an established agricultural unit on the operative dates has not been demonstrated, and it is not otherwise evident. As such, the information supplied is insufficient to establish that the barn is part of an established agricultural unit, as required for the proposal to benefit from permission under Class Q(a)(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The curtilage.

21. In the interpretation of Class Q the term 'curtilage' is defined as whichever is the lesser of (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the building, closely associated with and serving the purposes of that building, and (b) an area of land immediately beside or around the building on an established agricultural unit no larger than the land area occupied by that building.
22. The submitted site plan shows a red line around the house and also around the section. The barn is labelled as being for conversion. The same label also refers to garden amenity and indicative car parking. Three parking spaces are shown near the northeastern edge of the section, and an indication of new landscaping is shown on the southwestern edge.
23. The appellants prior approval statement and appeal statement both reproduce the site plan, as well as another plan in which only the section, and not the land immediately around the house, is edged in red. No other indications of the curtilage of the barn, existing or proposed, are provided.
24. In my site visit I observed an established enclosure between the section and Langham Road, and a low fence broadly corresponding to the southeastern and southwestern edges of the section on the plan.
25. Overall, the submission strongly indicates that the section alone, rather than the site, is the proposed curtilage of the barn. Even if that is so, the section is larger than the land occupied by the barn and, as such, the extent of the proposed curtilage would be greater than permitted by Class Q(a)(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Conclusion

26. For the reasons given above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

A Knight

INSPECTOR