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## Appeal Decision

Site visit made on 15 April 2025

by **C Livingstone MA(SocSci) (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 June 2025

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### Appeal Ref: **APP/K0940/W/24/3355532**

### Land north of the A66 Stainton, Penrith CA11 0EB

- 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 Stirland against the decision of Westmorland and Furness Council.
  - The application Ref is 2024/0724/PACOU.
  - The development proposed is change of use existing agricultural building including the insertion of windows and doors.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Councils reason for refusal refers to the development not meeting the requirements of Schedule 2, part 3, Class Q.1 (a) (i) and (iii) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). As the initial planning application was submitted in April 2024 the proposal falls to be considered against a previous version of Schedule 2, part 3, Class Q.1 which stated that development was not permitted by class Q if (a) the site was not used for an agricultural use as part of an established agricultural unit (i) on 20<sup>th</sup> March 2013 or (iii) in the case of a site which was brought into use after 20<sup>th</sup> March 2013, for a period of at least 10 years before the date development under Class Q begins.
3. A location plan ref 122-175-01, a site plan ref 122-175-04D, a Nutrient Neutrality Mitigation Strategy Rev E dated July 2024, Nutrient Neutrality Excel Spreadsheets dated 31/07/2024 and a Shadow Habitats Regulation Assessment Rev B July 2024 were submitted after the original application for planning permission. This information was submitted during the determination of the planning application and has been included in the Delegated Report. As such accepting this information would not prejudice the Council or interested parties.

### Main Issues

4. The main issues are whether the appeal scheme meets the requirements of paragraph Q.1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) such that it would constitute development permitted under Class Q, subject to the prior approval of certain matters. For permitted development under Class Q(a), namely a change of use from an agricultural building to a Class C3 dwellinghouse, prior approval is

required in respect to a number of matters, including whether the site was part of an established agricultural unit on 24<sup>th</sup> July 2023, whether the location or siting of the development make it impractical or undesirable for the use of the building to change and the extent of the building operations necessary to allow for the conversion.

5. The main issues are:

- whether the site was part of an established agricultural unit on (i) on July 2023 or (ii) where the site became part of the established agricultural unit after 24<sup>th</sup> July 2023, for a period of at least 10 years before the date development under Class Q begins;
- whether the location and siting of the building makes it impractical or undesirable for the building to change to a dwellinghouse, in regard to odour, noise and disturbance; and
- whether the development would consist of building operations reasonably necessary to convert the building.

## Reasons

### *Agricultural use*

6. Class Q permits, subject to various limitations and conditions, 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. This can include building operations reasonably necessary to convert the building.
7. The appeal building is a typical steel framed agricultural shed and at the time of my site visit was being used to store various items, including machinery, tools and equipment some of which is typically associated with agricultural use.
8. The appellant asserts the building has been in agricultural use since 20<sup>th</sup> March 2013 and that they have farmed the land since 2011. A tax return for the year ended 5 April 2012, a photo of two cows dated 2012 and a movement document for 32 ewes from 2016 were submitted in support of the application. Further, several satellite images have been provided in support of the appeal, including an image from 2009 prior to the shed being erected and an image from November 2014 which includes the shed.
9. The information that has been provided regarding the operation of the agricultural business is limited and without context. The tax return and photo date from the year prior to 2013, and the movement document does not demonstrate that the building was in agricultural use as part of an established agricultural unit. Further the satellite images do not show that the shed was on the site in 2013 as the first satellite image that shows the building in place dates from November 2014. As such there is no substantive evidence before me to clearly demonstrate that the building was solely in use for agricultural purposes on the relevant date, or duration, as set out in the criteria under Class Q as detailed above.
10. The evidence indicates that cattle and sheep may have been kept on the site. Still, there is little detail of the level of these activities or if the building was utilised as part of this. There is also no clear information regarding exactly when the shed

was built. As such, from the evidence provided, it is not possible to establish the full details of agricultural uses that have taken place within the site.

11. For the reasons detailed above, it has not been demonstrated that the proposed development meets the requirements of Schedule 2, part 3, Class Q.1 (a) (i) and (iii) of the (GPDO) and therefore is not permitted development.

#### *Location or siting*

12. The appeal building is located within a gently undulating field that is bound by trees and dry stone walls. The site is accessed via a track that connects to a private road off the A66 and is positioned between the A66 and an intensive poultry farm. The effect of noise and disturbance from vehicles travelling on the A66 and also the odour, flies and disturbance from the intensive poultry farm are material to my decision.
13. The Planning Practice Guidance (PPG)<sup>1</sup> states that 'impractical or undesirable' are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would 'not be sensible or realistic', and undesirable reflects that it would be 'harmful or objectionable'. The PPG goes on to highlight that the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.
14. Paragraph W(10)(b) of Schedule 2, Part 3 of the GPDO requires that regard be had to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval as if considering a planning application. Paragraph 135 of the Framework, amongst other things, states that decisions should ensure that development creates places with a high standard of amenity for existing and future users. Paragraph 198 of the Framework also requires decisions to ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions. In doing so they should avoid noise giving rise to significant adverse impacts on health and the quality of life.
15. The submitted Noise and Vibration Impact Assessment<sup>2</sup> found that the A66 was the main source of noise in the area, which would exceed recommended target levels of noise. In light of this the report found that opening windows would not be relied upon for ventilation over an extended period. Mitigation measures including specific glazing and alternative means of ventilation would be required for the dwelling to meet internal noise requirements. The noise reports that external noise guidelines are not achievable externally.
16. The submitted Odour Impact Assessment (OIA)<sup>3</sup> found that odour from poultry farms is affected by weather and if the chickens are housed or free range. In the case of the poultry farm that is close to the appeal site the chickens are within the shed with some access to the outdoors. The assessment was carried out on the 21<sup>st</sup> and 22 September during dry calm conditions and found that the effect of

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<sup>1</sup> Paragraph: 109 Reference ID: 13-109-20150305

<sup>2</sup> Noise and Vibration Impact Assessment prepared by Noise Assessments LTD Your Local Acoustic Specialist (updated 26 March 2024)

<sup>3</sup> Odour Impact Assessment prepared by Noise Assessments LTD Your Local Acoustic Specialist (July 2018)

emissions from the shed was slight and not considered to represent a constraint on planning consent.

17. The submitted OIA also highlighted that there is no ecology survey to highlight problems with flies in Stainton over the summer months and that the chicken farm has not clearly been identified as the source of any fly problem. The assessment found that flies are likely to congregate where there are a large number of chickens which would be within the sheds or outside only when it is weather dependent over the summer months.
18. Noting the time of year that the OIA was carried out and the weather conditions at the time it is unclear that the investigation is of sufficient scope to fully assess the impact of the poultry farm on future occupants of the development. There may be periods of pleasant weather extending over several months when the chickens and any resultant odour and flies would be outside. During these times the undesirable effects due to the proximity of the poultry farm could be exacerbated.
19. Overall, although not directly adjacent, the limited separation distances between the appeal building and the A66 and the intensive poultry farm has the potential to result in undesirable levels of noise, odour, flies for future occupiers of the appeal proposal to an extent that would be both harmful and objectionable. Although the proposed mitigation measures may address the identified harmful effects to a degree, they would still materially affect the way the dwelling would be occupied. Residents would have to seek alternative means of ventilation and opt to close windows permanently or at certain times and may seek to avoid the use of certain areas, such as any outside space, entirely.
20. For the above reasons, the proposed development would not comply with the prior approval matter at paragraph Q.2(1)(e) of Schedule 2, Part 3, Class Q of the GPDO as the location or siting of the building makes it impractical and undesirable for the building to change use to a dwellinghouse.

### *Building Operations*

21. The Council is concerned the proposed works to the building would go beyond that which could be deemed as reasonably necessary to convert the building and the scheme would represent the creation of a new building rather than a conversion of the existing barn. This is a valid issue to consider as the Planning Practice Guidance (PPG) says the intention of Class Q is not to allow rebuilding works that would go beyond that reasonably necessary for the conversion of the agricultural building to residential use<sup>4</sup>. The PPG refers to the judgement in *Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)* (Hibbitt). This establishes that Class Q requires a proposal to represent a conversion rather than a rebuild, fresh build or new build and it provides useful commentary on the issue.
22. The building subject of this appeal is a steel framed barn with concrete panels up to 1m high and timber boarding above. The pitched roof of the barn is finished in profiled steel sheeting. On one end wall is a lean-to addition that would be retained as existing. The proposed plans state that the existing timber cladding would be replaced with larch boarding and blockwork cavity walls would be built within the

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<sup>4</sup> Planning Practice Guidance, When is permission required section, Paragraph: 105 Reference ID: 13-105-20180615 revision date 15 06 2018

structure. The large opening on the front elevation of the building would be reduced and furnished with bifold doors and a triangular feature window above. Several additional openings are proposed on front, side and rear elevations. Further, a new insulated roof would be fitted internally.

23. The building was designed for agricultural purposes and is agricultural in appearance, the alterations are sensitive and would retain the buildings original character. Further, the proposal is supported by a Structural Report<sup>5</sup> that found that the structure is suitable for incorporation into the proposed scheme.
24. It is acknowledged that a large proportion of the external walls would be replaced, and several internal and external alterations would be required in order to allow for the conversion. However, sub-paragraph Q.1(j) of Class Q allows the installation of windows, doors, roofs or exterior walls as well as partial demolition of the building. In light of the extent of the range of works permitted under the terms of Class Q, I find the proposed works would not represent a new build rather than the operations reasonably necessary to allow conversion of the barn. Therefore, it would fall within the works allowed under Class Q1.(j) and so I conclude the proposal would represent permitted development under Class Q in this regard.

### **Other Matters**

25. The Council have not raised any concerns regarding flood risk, the obstruction of a public right of way, harm to the built heritage in the area or the significance of a national landscape or a national park. Further it raised no concerns in regard to nutrient neutrality or contamination risk. Based on the evidence before me I see no reason to disagree with the Council in regard to these matters.
26. To support the appeal proposal, my attention has been drawn to an example of a shed that was approved by the Council for conversion to a dwellinghouse. However, I do not have the full context of this decision including the precise history of the use of the building and all neighbouring land uses. I therefore cannot be certain that the circumstances in that case are the same as the appeal before me.

### **Conclusion**

27. It has not been shown that the proposed change of use constitutes development which would be permitted by Class Q of the GPDO. I therefore conclude that the appeal should be dismissed.

*C Livingstone*

INSPECTOR

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<sup>5</sup> Report on Structural Inspection of Steel Framed Barn at Stainton Penrith, prepared by A L Daines and Partners Consulting Civil and Structural Engineers (May 2023)