

Planning East – Appeal Decisions

Please see below list of appeal decisions made by the Planning Inspectorate between 23rd April 2024 and 22nd May 2024.

Full details of all appeals, can be found on the Council's website

<https://publicaccess.mendip.gov.uk/online-applications/>

Application Reference	2023/0123/PAA
Site Address	Barn North of Copplesbury Lane, Milton Clevedon, Shepton Mallet
Applicant/Organisation	R Gore
Application Type	Prior Approval
Proposal	Prior Approval for a proposed change of use of agricultural building to a dwellinghouse (Class C3) and for associated operational development.
Decision	Refusal (Delegated)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	10.05.2024



Appeal Decision

Site visit made on 9 April 2024

by **Lewis Condé BSc, MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/Q3305/W/23/3327257

Barn located to the north of Copplesbury Lane, Easting (x): 367681,

Northing (y): 137334

- 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 Rob Gore against the decision of Mendip District Council.
 - The application Ref is 2023/0123/PAA.
 - The development proposed is Prior Approval for a proposed change of use of agricultural building to a dwellinghouse (Class C3) and for associated operational development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the Local Planning Authority's decision notice, as this provides a more accurate description of the proposal than that used on the original application form. The appeal has been determined on this basis.
3. The appeal proposal relates to a prior approval notification made under Article 3(1), Schedule 2, Class Q, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO). Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.

Background and Main Issues

4. Class Q of Schedule 2, Part 3 of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses). Additionally, Class Q allows for building operations which are reasonably necessary to convert the building to a Class C3 use. This is subject to a number of situations/limitations where such development is not permitted/listed under paragraph Q.1, and, subject to compliance with conditions, as set out under paragraph Q.2.
5. In this case, having regard to the Council's submissions it has raised issue with the use of the appeal building and the exclusions in paragraph Q.1(a), as well as the exclusions set out at Paragraph Q.1(i) regarding the nature and extent of the building operations proposed.

6. The main issues are therefore whether the proposal would be permitted under Article 3(1), Schedule 2, Part 3, Class Q of the GPDO, specifically:
- Whether the site was solely used for an agricultural use as part of an established agricultural unit on the required date to comply with Paragraph Q.1(a) of the GPDO; and
 - Whether the required building operations are to the extent reasonably necessary to carry out the conversion of the building to comply with Paragraph Q.1 (i) of the GPDO.
7. The Council has not raised issues in respect of the conditions in paragraph Q.2 and I have no reasons to take a different approach.

Reasons

Agricultural Use

8. Paragraph Q.1(a) 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. The appeal building is a pitched roof, steel portal framed barn. It is situated within an open countryside location that is of a rural character and appearance, with agricultural fields populating the surrounding environment. The appellant highlights that the site is part of a sizeable agricultural holding and indicates that the building was last in agricultural use and has been so since before 20 March 2013. This has not been disputed by the Council, who acknowledged the agricultural use of the site and the building as part of its determination of a previous application (ref: 2021/2377/FUL).
10. Indeed, the Council's officer report for the appeal scheme acknowledges that there is no reason to consider that the building was not solely used for agricultural purposes or that its last purpose was not agricultural, and found the proposal to be compliant with both paragraph Q.1(a)(i) and (ii)¹ of Class Q of the GPDO.
11. The Council however contends that works undertaken to the building following the grant of planning permission in 2021 (ref: 2021/2377/FUL), results in the proposal contravening paragraph Q.1 (a) (iii). However, from the available evidence, that planning permission did not bring the agricultural building into use or affect any existing agricultural use of the building or unit. Instead, that permission related only to physical works that would improve the practical use of the existing building and the wider site. The extent of those works that have

¹ It is recognised that under Q.1(a) only one of the qualifying criteria would need to be met. Nevertheless, the Council Officer's Report states that it found the proposal to be compliant with both Q1. (a)(i) and (ii), whilst also finding it contravened (iii).

been implemented have also not seemingly resulted in a new building being created at the site. Additionally, the Council has not presented any robust evidence to suggest that there has been a break or cessation of the agricultural use of the building.

12. In refusing the application on the grounds of Q.1 (a) (iii), the Council has also referred to paragraph Q.1(g) of Class Q of the GPDO. This establishes that rights under Class Q cannot be exercised where works to erect, extend or alter a building for the purposes of agriculture via permitted development rights under class A(a) or Class B(b) of Schedule 2, Part 6 of the GPDO have been carried out on the established agricultural unit since 20 March 2013, or within 10 years before exercising the change to residential use, whichever is the lesser.
13. Although works to the appeal building may have recently taken place following the grant of planning permission 2021/2377/FUL, these works were not progressed under Class A(a) or Class B(b) of Schedule 2, Part 6 of the GPDO. As such, from the evidence before me, there is no basis to believe that the proposal contravenes the requirements of Section Q.1(g) of Class Q of the GPDO.
14. Consequently, from the available evidence, I have no reason to believe that the appeal site was not solely used for an agricultural use as part of an established agricultural unit on the required date. Accordingly, I find the proposal to comply with Schedule 2, Part 3, Class Q, Paragraph Q.1(a) of the GPDO.

Building Operations

15. The GPDO states at paragraph Q.1(i) that development under Class Q(b) is not permitted if it would 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 dwelling house.
16. Paragraph 105 of the Planning Practice Guidance (PPG) advises that the right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, the PPG is clear that it is not the intention of the permitted development rights to allow rebuilding work that would go beyond what is reasonably necessary for the conversion of the building to a residential use. Accordingly, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to benefit from the permitted development rights.
17. Neither the GPDO nor the PPG define the term 'reasonably necessary'. Consequently, this is a matter of planning judgement based on fact and degree of an individual case. My attention has though been drawn to the Hibbitt judgement² which relates to the difference between conversions and rebuilding dealt with under Class Q. This is important because if a development does not amount to a conversion it would fail to be development permitted under Class Q(b).
18. The Hibbitt case suggested that an agricultural building may be so skeletal and minimalist that the works needed to alter it to be used as a dwelling would be

² Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin).

of such a magnitude that it would be tantamount to a new build or rebuild as opposed to a conversion. Furthermore, Hibbitt reinforces that it is a matter of planning judgement as to whether the level of works involved would still constitute a conversion.

19. A report detailing a visual structural inspection of the existing building has been provided by the appellant³ (the structural report). The inspection of the building found the existing structural steelwork to be in sound condition and that the barn appears to be in a suitable structural condition to allow for conversion into a habitable dwelling. However, the structural report was based upon a visual inspection, and a single shallow trial pit which did not reveal the foundation formation level. Additionally, no detailed structural calculations for the proposed development have been prepared.
20. Even if the existing steel frame is structurally sound and capable of being utilised in the proposed dwelling without structural reinforcement or alteration, consideration still needs to be given to the total extent of works proposed and whether they amount to a conversion of the building.
21. The proposal seeks to retain the existing external timber cladding that encloses the majority of the building's external elevations, as well as corrugated steel sheets to the gable ends. The existing timber cladding is not structurally grounded or set in a strip foundation, whilst the areas of cladding tend not to be solid due to the presence of expansion or ventilation gaps between much of the timber. Notwithstanding that the external cladding would be maintained, in practical terms it would have a rather superficial role with new walls needing to be built behind the cladding to the majority of the barn, whilst areas of glazing and doors would also need to be introduced in the remaining openings.
22. In terms of the roof, I note the section details that have been provided and the appellant's claims that the proposal would retain the existing roof materials and treat these where necessary. However, whilst the existing steel trusses and purlins may be utilised, I am unconvinced that it would be feasible to retain the existing roof coverings. From my observations on site, it appeared that there were sizeable gaps between some of the roof sheets, as well as occasional holes in some of the sheets.
23. Indeed, the appellant's suggestion that the existing roof is to be retained appears to be at odds with the recommendations of his own structural report. The structural report states that the existing roof coverings are asbestos cement sheeting, before recommending that all asbestos containing materials will need to be disposed of safely and appropriately. It further indicates that the primary structure is considered to be adequate to support the load of external works, for example, the replacement of existing asbestos cement sheets with insulated cladding panels of a similar weight. Furthermore, as part of its recommendations, the structural report states that the replacement roof cladding and its fixings is to provide the same diaphragm action as the current cladding, thereby providing stability to the steel frame.
24. Therefore, based on the evidence before me, I do not consider the appellant's stated approach of the roof being formed by retaining the asbestos cement sheeting, with any replacements being of a like for like style, to be reasonable. Even if only certain sections of the roof coverings would need to be replaced, I

³ Prepared by Beveridge Chartered Engineers (dated 17 June 2022)

consider it likely that this would lead to a 'domino effect' particularly given it involves asbestos cement sheeting. Accordingly, I consider it likely that a substantially new roof would be required to convert the building to a dwellinghouse.

25. Turning to the floor of the building, planning permission 2021/2377/FUL is understood to remain extant and, amongst other matters, allows for the installation of a concrete pad in the appeal building. The appellant has therefore indicated that the concrete pad to facilitate the proposed conversion of the building would be progressed under the extant permission, as opposed to the current appeal scheme. Albeit, the appellant indicates that the installation of a floor falls within the scope of works allowed under Class Q.1(i).
26. At the time of my site visit there remained no internal floor slab within the building, while I note the appellant's structural report identifies that a nominally reinforced concrete slab will be required to be installed. Regardless of whether the provision of the new concrete floor can be undertaken through a separate planning permission, or comprises a structural element, the works would still need to be undertaken to facilitate the building's use as a dwellinghouse. Accordingly, I still have to take account of the need for this work to be complete in my consideration as to whether the building before me is suitable for conversion to a dwellinghouse.
27. Individually, the works for each of the above components (i.e. new walls, windows, doors, roof and internal floor slab) may be permissible under the terms of paragraph Q.1(i) of the GPDO, or have a separate extant permission. Nevertheless, having regard to established case law, I find that the totality of the works that would be necessary to allow the building to be used as a dwellinghouse would be tantamount to a substantial re-build, as opposed to a conversion.
28. Accordingly, I find that the proposed development would go beyond building operations reasonably necessary to convert the building into a dwellinghouse. As such it would fail to comply with paragraph Q.1(i) of the GPDO and would not benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the Order.

Other Matters

29. To support the appeal proposal, the appellant has provided copies of previous appeal decisions whereby Inspectors have determined that the nature of the building works proposed would be reasonably necessary for the respective buildings to function as dwellinghouses. However, I do not have the full context of these decisions including the precise conditions of the relevant agricultural buildings for conversion or the full extent of works involved in each case. My decision therefore does not turn on this matter.

Conclusion

30. For the reasons given above, I find that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore dismissed.

Lewis Condé
INSPECTOR