

## Appeal Decision

Hearing held on 6 July 2016

Site visit made on 6 July 2016

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 05 August 2016**

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**Appeal Ref: APP/L3245/W/16/3145566**

**Barn to the South of Heath Farm, Yockleton Road, Cardeston, Shrewsbury Shropshire SY5 9NN**

- The appeal is made under section 78 of The Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Paragraph Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
  - The appeal is made by Mr Julian Record of Record Associates against the decision of Shropshire Council.
  - The application Ref 15/04807/PMBPA, dated 2 January 2015, was refused by notice dated 7 January 2016.
  - The development proposed is change of use of an agricultural building to a C3 dwelling house.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Julian Record of Record Associates against Shropshire Council. This application is the subject of a separate decision.

### Preliminary Matters

3. The application was made under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the Order') (hereafter referred to as 'Class Q'). This permits development consisting of: (a) 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; and (b) building operations reasonably necessary to convert the building.
4. It was confirmed at the hearing that approval is being sought under Class Q(a) and Class Q(b). The Council dealt with the application on this understanding and I shall determine the appeal on the same basis.
5. Permission under Class Q is conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval would be required as to the matters set out in Paragraph Q.2(1)<sup>1</sup>.

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<sup>1</sup> All paragraph references hereafter relate to paragraphs within Schedule 2, Part 3 of the Order.

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6. The submitted plans identify an area of proposed curtilage. This would be immediately beside the building and no larger than the land area occupied by it. It would therefore meet the definition of 'curtilage' set out in Paragraph X.
7. Paragraph W(3) states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on these grounds that the Council refused the application. However, the reason for refusal makes clear that, had permitted development rights applied, the design or external appearance of the building would have been deemed unacceptable.

### **Main Issues**

8. The main issues in this case are:
  - a) whether the proposal would constitute permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended; and
  - b) if the proposal does constitute permitted development, whether the design or external appearance of the building would be acceptable.

### **Reasons**

9. The deemed permission granted by Class Q is subject to a number of limitations and restrictions which are set out in Paragraph Q.1. The proposal must meet all of these requirements in order to qualify as permitted development.
10. The Council's primary concern is in relation to compliance with Paragraph Q.1(a). This 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 on 20<sup>th</sup> March 2013 ('the relevant date'), or 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.
11. Paragraph X defines 'agricultural building' to mean a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business. The term 'agricultural use' refers to such uses. It is clear therefore that agricultural use has a more restrictive meaning in the context of an application under Class Q.
12. The appeal building was originally constructed whilst Heath Farm was operated as a rare breed pig rearing enterprise known as 'Pigs in Clover'. The Council accepted at the hearing that this was a business and that the building had been used in connection with the business. However, the pig enterprise ceased and the appellant purchased the barn as part of a larger land holding, which included the farmhouse, in April 2012.
13. It is evident from the appellant's own submissions that the barn was in use on the relevant date for the storage of various items of agricultural related equipment. There is, however, no substantive evidence to demonstrate that this was being used in connection with a trade or business. Indeed, from what I heard the equipment was being stored for purposes relating to the general maintenance and improvement of the land.

14. The refusal reason focuses upon whether the building was used solely for agricultural purposes as part of an established agricultural unit. The latter is defined within Paragraph X as 'agricultural land which is occupied as a unit for the purposes of agriculture'. Having regard to this definition, I accept that the appellant's landholding could reasonably be described as an agricultural unit. However, this does not address what I consider to be the central and most critical matter; whether the agricultural use on the relevant date was for the purposes of a trade or business.
15. There is no firm evidence to demonstrate that this was the case and therefore I must conclude that the proposal would not meet the restrictions and limitations set out in Paragraph Q.1(a). As such, it would not constitute permitted development under Class Q and there is no requirement for me to consider the matters for which prior approval is required under Paragraph Q.2(1).

### **Other Matters**

16. I am told that since purchasing the site the appellant has acquired a small flock of sheep with the intention of selling surplus lambs. However, this activity has made limited use of the building and was not in existence on the relevant date. Whilst I note that a local farmer was using the appellant's paddocks for sheep grazing and the cultivation of hay at that point in time, the parties are agreed that this did not make use of the building.
17. Although not referenced in the Council's decision, the scheme would also conflict with Paragraph Q.1(g) by reason that the proposed roof overhang would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. I acknowledge the appellant's suggestion at the hearing that additional eaves depth would be a positive design feature and an ecological benefit. However, this does not alter the fact that the scheme would fail to comply with the limitations and restrictions of the Order.
18. It was contended that the proposal would conflict with Article 3(4) of the Order because the development would be contrary to a condition on a previous planning permission for a pair of general storage buildings on the site. However, the appeal building bears no resemblance to that shown on the approved plans, being substantially taller and clad in different materials. I also note that there was no application to discharge any of the conditions on the permission. This leads me to the view that the building on site is not that which was previously permitted; hence the proposal is unaffected by Article 3(4).
19. The Council argued in the alternative that the proposal would conflict with Article 3(5) of the Order by reason of the building operations involved in the construction of the building being unlawful. There is nothing to suggest that the building has the benefit of planning permission. However, it is common ground that it was substantially complete by the time the appellant purchased Heath Farm in April 2012. Furthermore, the Council confirmed at the hearing that no enforcement notice is in force. On the basis of this evidence, the building would be lawful under Section 191(2) of The Town and Country Planning Act 1990, as amended. Accordingly, I find no conflict with Article 3(5).
20. Part of the Council's case is that the building was used for the storage of domestic items. However, the case officer's observations post-date the relevant date and the other evidence in support of this argument is weak.

Whilst there are some indications that domestic items may have been found in and around the barn since the appellant took ownership, I am not convinced that this has amounted to a material change of use.

21. Notwithstanding the lack of a relevant refusal reason, I have been invited to consider whether the building is structurally suitable for conversion. In the absence of a structural report I am unable to reach a finding on this issue. However, the appeal has failed for other reasons and my decision does not turn on this matter.
22. I have been referred to various appeal decisions and a number of decisions made by the local planning authority. Although I have been given the salient points, full details of those cases are not provided and I am unable to establish whether there are any direct parallels. The cases are not determinative in any event and my decision must be made on the facts of this particular case.

### **Conclusion**

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Robert Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Julian Record                      Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Frank Whitley MRTPI              Technical Specialist Planning Officer, Shropshire Council

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Statement of Common Ground
2. Late representation from the occupier of Oaklands, Cardeston