

DELEGATED DECISION REPORT

DET/2024/0004
Valid 26/01/2024

WYLDE GOOSE FARM
ASHBOURNE ROAD
BRADNOP

CHANGE OF USE OF
AGRICULTURAL BUILDING TO
A FLEXIBLE USE,
SPECIFICALLY AS A HOTEL
COMPRISING UP TO 3
APARTMENTS (USE CLASS
C1).

(NOTIFICATION - CHANGE OF
USE PRIOR APPROVAL)

MAIN ISSUES

- Compliance with GPDO(2015) Schedule 2, Part 3 Class R – “agricultural buildings to a flexible commercial use”
- (a) transport and highways impacts of the development,
- (b) noise impacts of the development,
- (c) contamination risks on the site,
- (d) flooding risks on the site,
- Provisions of paragraph W

DESCRIPTION OF SITE

A stand-alone later 20th C farm shed c. 18m x 12m or in total 216m². The building stands in a field setting adjacent to a one time farm yard and is about 30m to 40m south west from the original farm house. About 15m from the building and closer to the farm house is a further former farm building recently converted under SMD/2018/0725 following Class Q DET/2017/0041 and now used as a holiday let for up to eight adults in four double bedrooms. The farm house itself is also advertised on line with the barn as holiday accommodation for six adults in three bedrooms (see <https://thebarnatwyldegoose.co.uk/>).

This cluster of developments is accessed via a branch from a farm track which connects with the A523 Ashbourne Road 180m to the north east. A public footpath follows the farm track.

PROPOSAL

To change the use class of the building to hotel (C1). The site plan as amended following discussions shows an area of ‘curtilage’ with space for at least six vehicles. Agreement was also reached to amend the wording of the description of development in order to read: Change of use of agricultural building to a flexible use,

specifically as a hotel comprising up to 3 apartments (Use class C1). The LPA had commented that the word 'aparthotel' as first used in the application submission has no meaning either in English or in planning terminology. The pd under GPDO Schedule 1 part 3 Class R is for change of use to: (b) Class C1 (hotels).

An ecological report was undertaken by Leigh Ecology and this is submitted in support of the application.

Two Planning Inspector appeal decisions are referred to in the submission – copies were not provided. In response to discussions with the LPA the agent has later provided some further appeal decisions including 3241610 (near Worksop) which amongst other things discusses the relevant date of 3rd July 2012 as used in defining the regulations. Also in response to the LPA's questions the applicants have provided affidavit statements to support the claimed agricultural use at 12th July 2012.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Local Plan (adopted 9th September 2020)

SS1 Development Principles
SS2 Settlement Hierarchy
SS10 Other Rural Areas Area Strategy
DC1 Design Considerations
DC3 Landscape and Settlement Setting
(H1 New Housing Development)
NE1 Biodiversity and Geological Resources
NE2 Trees, Woodland and Hedgerows
T1 Development and Sustainable Transport

National Planning Policy Framework December 2024

Paragraph(s) 1 – 14;

Section(s) 4 – Decision making; 6 – Building a strong and competitive economy; 7 – Ensuring the vitality of town centres; 8 Promoting healthy and safe communities; 11 – Making effective use of land; 12 – Achieving well designed places; 15 – Conserving and enhancing the natural environment; 16 – Conserving and enhancing the historic environment.

Adopted Supplementary Planning Documents/Guidance (SPD/G):

- Space About Dwellings SPG
- Design Principles SPG
- Design Guide SPD adopted 21st February 2018

Local Plan Supporting Evidence Documents:

- Landscape and Settlement Character Assessment (2008)

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

[For the adjacent bldg] DET/2017/0041 – Change of use of Agricultural Building to a Dwellinghouse – refused]

[For the adjacent bldg] SMD/2018/0725 – Proposed conversion and alteration of redundant agricultural building to form a single dwellinghouse – approved

CONSULTATIONS

Publicity

Site Notice expiry date: 18.03.2024

Neighbour consultation period ends: 19.02.2024

Press Advert: N/A

Public Comments

None

Town / Parish Comments

Bradnop Parish Council

- Insufficient substance in this building for a conversion
- This would not simply be a conversion but would be a complete replacement building
- More information and detail would be needed for this to be discussed further
- Not substantial enough in any way shape or form

SMDC Environmental Health

The site is relatively remote so with good on-site management there is no predicted adverse impact to neighbourhood amenity.

Conditions recommended

- Impacts during work – avoid anti-social hours
- Contamination - The site has historically been used as an agricultural out building / hardstanding and may have some associated contamination (chemicals / asbestos from old buildings). A full contamination assessment would appear too onerous. However, it would be advisable that all soft landscaped / garden areas are tested for contaminants (including Asbestos screening) to ensure suitability of area used.
- Outdoor lighting

Staffordshire County Council Highways

Initially recommended refusal. Confirmed by e-mail that it would be acceptable subject to receipt of an amended drawing to show 6 spaces and this has been submitted in revised dwg site plan 002.4.

SMDC Waste Collection Services

Responded to confirm no issues raised.

OFFICER COMMENTS

Principle of Development

Class R provides for a change of use of buildings from 'agricultural building to a flexible commercial use'.

The permitted development is set out in the GPDO as:

R. 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 flexible use—

(a) falling within one of the following provisions of the Use Classes Order—

- (i) Class B2 (general industrial) of Schedule 1;
- (ii) Class B8 (storage or distribution) of Schedule 1;
- (iii) **Class C1 (hotels) of Schedule 1;**
- (iv) Class E (commercial, business or service) of Schedule 2; or
- (v) Class F.2(c) (outdoor sport or recreation) of Schedule 2; or

(b) for the provision of agricultural training.

Certain restrictions are set out at R.1:

R.1 Development is not permitted by Class R if—

(a) the building was not used solely for an agricultural use as part of an established agricultural unit—

- (i) on 3rd July 2012;
- (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 building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins;

(b) the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 1,000 square metres;

(c) the site is, or forms part of, a military explosives storage area;

(d) the site is, or forms part of, a safety hazard area; or

(e) the building is a listed building or a scheduled monument.

Conditions are set out at R.2 and R.3

R.2 Development is permitted by Class R subject to the following conditions—

(a) a site which has changed use under Class R may, subject to paragraph R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use;

(b) for the purposes of the Use Classes Order and this Order, after a site has changed use under Class R the site is to be treated as having a **sui generis** use;

(c) after a site has changed use under Class R, the planning permissions granted by **Class E of Part 7** of this Schedule apply to the building, subject to the following modifications—

- (i) **“curtilage” has the meaning given in paragraph X** (interpretation) of this Part;
 - (ii) any reference to “office building” is to be read as a reference to the building which has changed use under Class R;
- (d) *[not applicable to this proposal]* where the site is to be used for general industrial purposes within Class B2, it must only be used for the processing of—
- (i) raw goods, excluding livestock, which are produced on the site and are to be sold on the site, or
 - (ii) raw goods mentioned in paragraph (i) together with goods ancillary to the processing of those raw goods.

R.3— (1) Before changing the use of the site under Class R, and before any subsequent change of use to another use falling within one of the use classes comprising the flexible use, **the developer must—**

(a) *[not applicable to this proposal]* where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit does not exceed 150 square metres, provide the following information to the local planning authority—

- (i) the date the site will begin to be used for any of the flexible uses;
 - (ii) the nature of the use or uses; and
 - (iii) a plan indicating the site and which buildings have changed use;
- (b) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, **apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—**
- (i) transport and highways impacts of the development;
 - (ii) noise impacts of the development;
 - (iii) contamination risks on the site; and
 - (iv) flooding risks on the site,

and the provisions of paragraph W (prior approval) apply in relation to that application.

(2) Subject to sub-paragraph (3), development under Class R of the type described in paragraph R.3(1)(b) **must begin within a period of 3 years** starting with the prior approval date.

(3) Where, in relation to a particular development under Class R of the type described in paragraph **R.3(1)(b)**, planning permission is granted on an application in respect of associated operational development before the end of the period referred to in sub-paragraph (2), then development under Class R must begin within the period of 3 years starting with the date that planning permission is granted.

(4) For the purposes of sub-paragraph (3), “associated operational development” means **building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R.** [bold type and underline added (LPA)]

Interpretation of Class R

R.4 For the purposes of Class R, “flexible use” means use of any building or land for a use falling within the list of uses set out in Class R and change of use (in accordance with Class R) between any use in that list.

The applicant has quoted extracts from two appeal decisions and these have been separately obtained by the LPA.

Paragraph X

“agricultural building” means a building (excluding a dwellinghouse) **used for agriculture and which is so used for the purposes of a trade or business;** and “agricultural use” refers to such uses;

“curtilage” means, for the purposes of Class R

(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser;

“established agricultural unit” means agricultural land occupied as a unit for the purposes of agriculture—

(a) for the purposes of Class R, **on or before 3rd July 2012 or for 10 years before the date the development begins;** or [Not applicable] (b) for the purposes of Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins;

“site” means the building and any land within its curtilage;

Design

Not applicable other than in so far as the design policy may cover the four issues open to consideration under Class R namely:

- (i) transport and highways impacts of the development;
- (ii) noise impacts of the development;
- (iii) contamination risks on the site; and
- (iv) flooding risks on the site,

SCC Highways have confirmed in an e-mail dated 20.03.2024 that with regard to parking, “given there is capacity (land within the red edge plan) for further parking I am happy to accept”. It was noted: “for a 1 bedroom you’d expect 1 vehicle however for a 2- or 3-bedroom unit you could expect 2 vehicles and therefore possibly the

requirement for the provision for 6 vehicles". Revised site plan drawing 002.4 demonstrates the space for six vehicles.

There are no close noise sources that could be likely to impact adversely on the site if used as a hotel.

With regard to contamination EH are content subject to a condition to carry out an agreed testing methodology prior to first use.

There are no identifiable flooding risks for this site.

Other matters

The Parish Council has questioned how a building of this limited structural form can be considered for a hotel. It is in essence a simple timber pole barn with gap-spaced timber wall boarding to parts, net sheeting and some block work elements parts of which show some evidence of movement and disrepair. As the PC says, "this would not simply be a conversion but would be a complete replacement building". However Class R does not take account of the structure – there has to be a 'building' but that is all. If granted Class R consent there would then be a need for a full Planning Application to be submitted but the fact of the Class R consent (if granted) would be a material consideration which effectively confirms the permission to be acceptable in the matters covered by Class R. Other matters such as the scale, design and appearance of the new building would be subject to the Council's full relevant planning policy.

Building is defined in the planning acts as 'any structure or erection' and the LPA can be satisfied that the existing structure, notwithstanding its relatively simple form, would and must be regarded in planning terms as a 'building'.

In the case of Class R it must be an 'agricultural building' and this is further defined at Paragraph X to mean "a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business". Note the present tense language usage adopted. Based on the LPA's visit to the site and noting the present day use of the other adjacent buildings exclusively as holiday lets there would appear no longer to be any agricultural use at the site. However, Class R specifies the date of 3rd July 2012 as being a relevant date at which point the building must have been in use "solely for an agricultural use as part of an established agricultural unit" or if not in use on that date, when it was last in use.

It could be regarded that there is some awkwardness if not confusion in the wording of the legislation and it might be considered that notwithstanding the details in relation to the 3rd July 2012 date, the building use needs to be one of agricultural use at the present time. The definition of agricultural building at paragraph X certainly adopts the present tense – though it could possibly be suggested that this formulation of language may not rule out its applicability being at a time in the past – the 'historical present tense' often used in the narration of past events.

The issue is given new perspective however with the amendment to Class Q introduced as of 30th April 2024 under SI 2024 No. 579. Up to now the issue discussed above applied also to Class Q and was perhaps not properly realised. Class Q – but not Class R – has now been amended to expressly encompass “a former agricultural building that was (but is no longer) part of an established agricultural unit”.

Dealing first with the 3rd July 2012 date the LPA has found no specific information to support an interpretation based on paragraph X that might require the agricultural use to be current and on-going. Planning lawyer Martin Goodall discusses the very point at pp 127 – 128 of his book, ‘A Practical Guide to Permitted Changes of Use’ (2019). Albeit this was in relation to Class Q rather than Class R, the point applies equally. Writing in 2019 he said: “if present and continuing use were to be a necessary qualifying criterion, it would render the words of paragraph Q.1(a) entirely otiose”. Paragraph X applies equally to Class R and in the above quotation reference to Q.1(a), as it then was, can be substituted with R.1(a) which has not been altered in the legislation to arrive at Mr. Goodall’s same conclusion. When Mr Goodall was writing in 2019 the 30th April amendment had not been made. It remains the LPA’s view that something is unclear here but the LPA must also note that commonly Inspectors settle using the relevant date and this is exemplified in the Worksop appeal 3241610. Paragraphs 14 to 16 give the Inspector’s conclusion for that appeal:

14. From the evidence provided it seems reasonable to conclude that, the appeal buildings were probably in agricultural use as part of the wider operation on 3 July 2012. I acknowledge that this use may have only been for a relatively short period of time, starting sometime after the cessation of the unauthorised vehicle storage use in 2010 and probably ending when the new building at Westfield Farm was completed. The buildings may have been used more recently for storage related to equestrian use.

15. However, the evidence points to the buildings being used in association with the agricultural use in July 2012, and for the purposes of Class R, provided that the building was in agricultural use on that date, any prior or subsequent use is not of concern.

16. I have found that, on the balance of probabilities, the buildings were in sole agricultural use as part of an established agricultural operation on 3 July 2012. The proposal therefore complies paragraph R.1 of Schedule 2, Part 3, Class R of the GPDO, and as such benefits from permitted development rights.

This is one Inspector’s assessment and has not so far as the LPA is aware been tested in the courts.

As regards the current SMDC application under consideration here the LPA can be satisfied that at the 3rd July 2012 the building was in agricultural use as part of the agricultural use at the time and the LPA has no doubt this was for the purposes of a trade or business as it was part of a large farm enterprise. Confirming the 3rd July 2012 use status are the declarations submitted by the applicant and his brother. Moreover the applicants have gone on to supply additional statements to attest a

continuing agricultural use in any event (supplied by e-mail. with photos dd 24th May 2024).

Hitherto the LPA did not find the building to be in current agricultural use but noted that nor was there any evidence of an intervening non-agricultural use having arisen. The base line planning status of the building is agricultural and were a non-agricultural use to arise the LPA would regard this as a development needing planning consent. A further complication however is that the building has been co-opted into a new site ownership comprising just the former farm house, garden and yard area and the previously converted adjacent building. It was the LPA's view that an agricultural business may no longer be underway from here. Certainly the remainder of the site – ie. other than the application building – is being managed as a holiday lettings business. The further affidavit however now gives weight to there being a continuing agricultural use of the application building.

CONCLUSION / PLANNING BALANCE

After very through consideration as briefly summarised above the LPA finds no clear grounds that would disqualify the proposal as meeting the description of permitted development given under paragraph R. The LPA can also be satisfied with regard to paragraph R.1 that sufficient evidence has been submitted to demonstrate on the balance of probabilities that the critical date of 3rd July 2012 is complied with.

Subject to certain conditions being imposed as recommended by the consultees there are no overriding concerns as regards (a) transport and highways impacts of the development, (b) noise impacts of the development, (c) contamination risks on the site or (d) flooding risks on the site.

Despite the Parish Council's understandable doubts about the worthiness of the structure, as discussed in the report, the fact of this being a 'building' in planning terms is sufficient under Class R.

OFFICER RECOMMENDATION : Prior approval be granted

Case Officer: Arne Swithenbank

Recommendation Date: 31st May 2024

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council