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## Appeal Decision

Hearing held on 7 July 2015

Site visit made on 7 July 2015

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

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

**Decision date: 10 August 2015**

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**Appeal Ref: APP/W1850/W/15/3004494**

**The Barn, Winforton Woods, Winforton, Hereford, Herefordshire HR3 6EB**

- 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, Class Q of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Yellow Wood Limited against the decision of Herefordshire Council.
  - The application Ref P142090/CU, dated 11 July 2014, was refused by notice dated 3 September 2014.
  - The development proposed is the change of use from a barn to a permanent dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters and Background

2. A new consolidated Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) came into force on 15 April 2015. Under the new GPDO, permitted development rights for agricultural buildings to dwelling houses now fall under Class Q, rather than Class MB. However, the legislation provides that any applications made under the provisions of the previous GPDO should be treated as if made under the new GPDO. Therefore, I have treated the application, the subject of this appeal, as made under Class Q.
3. The site address details indicated on the application form as 'The Hut' are inaccurate. 'The Hut' is a building within Winforton Woods but it is not the same building or in the same location as the appeal building. The appeal building is a barn located adjacent to the forestry office and store. Therefore, the correct site address as agreed by both parties at the hearing is The Barn, Winforton Woods, Winforton, Hereford, Herefordshire HR3 6RB. For the avoidance of doubt, I have therefore used this address in my decision.
4. It was agreed by both parties at the hearing that the correct name of the appellant is Yellow Wood Limited. I have therefore used this name in my decision.
5. The description of the proposed development on the application form is for 'agricultural storage of pig feed and paraphernalia associated with the wild boar/pig farm e.g. food troughs, water butts, jerry cans, water distribution pipe and fencing material'. However, there is no description of the proposal on the appeal form and the description of the proposal on the Council's decision notice

is for 'change of use from a barn to a permanent dwelling'. I have used this latter description in the heading above as it more accurately reflects the permitted development for which prior approval is sought in the terms of Class Q of the GPDO.

6. It was agreed by both parties at the hearing that the correct plan is that marked 'Appendix C, Plan 2 site location "new curtilage"', which shows the appeal building together with the reduced curtilage area to the front. I have therefore determined the appeal on this drawing, the same as the Council.
7. At the hearing the appellant submitted copies of a Felling Licence, a species list for Winforton Woods, records from Herefordshire Biological Records Centre and Ecology survey, an extract from The Agriculture (Miscellaneous Provisions) Act 1968, and a Structural Report together with a covering letter dated 31 May 2015 and Drawing Number 267/01. The Council was given the opportunity to comment on the content of these documents.
8. Schedule 2, Part 3, Class Q of the GPDO defines development consisting of a change of use of a building and any land within its curtilage from a change of use as an agricultural building to a use falling within Class C3 (dwelling houses); and building operations reasonably necessary to convert the building referred to a use falling within Class C3 (dwelling houses) as permitted development. It was agreed at the hearing that the proposal was for a change of use only under Class Q.1. (a).
9. In my determination of the appeal I have had regard to a number of previous appeal decisions<sup>1</sup>.
10. The appeal building was erected following the Council's decision ref: DCNW2007/0839/S dated 12 April 2007 that prior approval was not required for the proposal described as: *a forestry building for storage of pig feed and woodland produce*.

### **Main Issue**

11. The main issue is whether or not the appeal proposal is permitted development having regard to the provision of Schedule 2, Part 3, and Class Q of the GPDO.

### **Reasons**

12. The appeal relates to a barn located within Winforton Woods. The site includes a dirt area of approximately 40m<sup>2</sup> to the front of the building. There is no dispute between the main parties that on the 20 March 2013 the building was being used for the storage of various items connected with both woodland activities and the keeping of pigs and chickens.
13. Class Q grants permission for the change of use from use as an agricultural building to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order together with building operations reasonably necessary to convert the building. Paragraph Q.1. provides a list of exclusions as to when development would not be permitted by Class Q. The Council's reason for refusal states that the proposed change of use would not comply with Q.1. (a) in that the land was not used solely for an agricultural use as part of an

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<sup>1</sup> APP/W1850/X/14/2216731, APP/W1850/C/13/2203923, APP/W1850/A/12/2187263, APP/W1850/A/12/2182739, APP/W1850/A/08/2076671 & APP/E2734/A/14/2220495.

established agricultural unit on the 20 March 2013<sup>2</sup>. The Council consider that although the building is being used for agriculture in connection with the pigs and chickens, the use of the building for forestry purposes is not an agricultural use.

14. The appellant states that the materials stored at the barn, such as water butts, jerry cans, water distribution pipe, pig feed, hand tools and fencing material are associated with both forestry and agriculture. This description of contents is consistent with what I saw on my visit. The appellant considers that the use of the building should be considered agricultural for the purposes of the GPDO.
15. I note that the definition of "agriculture" in section 336 of the Town and Country Planning Act 1990 (as amended) "includes 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, and "agricultural" shall be construed accordingly;". Nevertheless, the starting point for this appeal is the definition of "agricultural building", and the related definition of "agricultural use", which are specifically for the purposes of Part 3 of Schedule 2 of the Order. These are set out at paragraph X (Interpretation of Part 3) which states that: "agricultural building" means a building used for agriculture and which is so used for the purposes of a trade or business, and excludes any dwelling house, and "agricultural use" refers to such uses. This definition is broadly consistent with the definition of agriculture in the Agriculture (Miscellaneous Provisions) Act 1968 provided by the appellant, in terms of the use of the land for the purpose of an agricultural trade or business.
16. The appellant has drawn my attention to a previous appeal decision dated 24 January 2013<sup>3</sup> for a proposal described as: '*diversification project for woodland pig farm for use of existing infrastructure for accommodation*'. At the time of this previous appeal the forestry business was unviable and the number of pigs was to be reduced. This was confirmed by the appellant at the subject hearing. Consequently, between December 2012 and the end of February 2013 all the pigs were removed from the land. On 20 March 2013 one wild boar and eight chickens remained on the land. The wild boar was subsequently removed from the land on 24 March 2013. Whilst I saw a small number of pigs on the land at the time of my site visit, the appellant confirms there was no 'pig business' on 20 March 2013.
17. On 20 March 2013 there was a limited forestry activity taking place on the land which the appellant confirms did not amount to a business. Furthermore, there is no evidence that the intended wood fuels business as indicated at the previous hearing ever commenced. Consequently, although the building was in use at the time for storage purposes in connection with both the forestry activity and pigs, I have been provided with no substantive evidence to indicate that the appeal building was used for the purposes of a trade or business on 20 March 2013.

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<sup>2</sup> See Q.1.(a)(i)

<sup>3</sup> APP/W1850/A/12/2182739.

18. I therefore conclude that the subject building does not fall within the definition of “agricultural building” as set out in the Order. Consequently, it cannot benefit from the permission granted by Class Q.
19. The further limitations in Q.1. were discussed at the hearing. The Council has no concerns regarding the impacts of transport and highway and noise, the risks of contamination or flooding, the location or siting of the building and its design or external appearance. Following submission of a Structural Report together with a covering letter dated 31 May 2015 and Drawing Number 267/01, the Council conceded at the hearing that the appeal building was structurally sound. As I have concluded that the appeal building cannot benefit from the permission granted by Class Q of the Order my decision regarding the proposed change of use is not influenced by these matters.

### **Other matters**

20. I have had regard to the incomplete unilateral undertaking making provision for a management plan. The Council confirmed at the hearing that a unilateral undertaking was not necessary. As I am dismissing the appeal on another substantive issue it is not necessary for me to look at the unilateral undertaking in detail, given that I have concluded that the proposal is not permitted development.
21. Comments from residents regarding highway safety are noted but do not add to my reasons for dismissing the appeal.

### **Conclusion**

22. For the above reasons, I conclude that the appeal should be dismissed.

*Elizabeth Jones*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Paul Colley-Davies                      Director Yellow Wood Limited

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

Mr M Tinsley                                  Development Manager Herefordshire Council

### **INTERESTED PERSONS:**

Mr J Forrest                                  Eardisley and District Group Parish Council

## **DOCUMENTS SUBMITTED AT THE HEARING FROM THE APPELLANT**

1. Copy of Felling Licence.
2. Copy of species list for Winforton Wood.
3. Copy of records from Herefordshire Biological Records Centre and Copy of Ecology survey.
4. Copy of an extract from The Agriculture (Miscellaneous Provisions) Act 1968.
5. Copy of Structural Report, covering letter dated 31 May 2015 and Drawing Number 267/01.