

Appeal Decision

Site visit made on 7 September 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 22 September 2016

Appeal Ref: APP/M2270/W/16/3148535

The Oast House, Fosters Farm, Hayesden Lane, Tonbridge, Kent TN11 9AV

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class Q of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr & Mrs Brown against the decision of Tunbridge Wells Borough Council.
 - The application Ref 15/510651/PNQCLA, dated 22 December 2015, was refused by notice dated 16 February 2016.
 - The development proposed is the change of use and conversion of existing agricultural building to create 3 dwelling houses with associated car parking, amenity space and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Brown against the Council and that application is the subject of a separate decision.

Main Issue

3. Whilst the Council's decision refused prior approval, it is clear from its submissions that it considered the works do not constitute development permitted under *The Town and Country Planning (General Permitted Development)(England) Order 2015* (the GPDO). This has been accepted by the Appellants who have structured their case accordingly, and so I will consider the appeal on that basis. Therefore, the main issue is whether the proposal would be development that is permitted under the GPDO.

Reasons

4. Class Q of Part 3 of Schedule 2 of the GPDO broadly permits the change of use of an agricultural building to a dwelling or dwellings, together with the building operations reasonably necessary for that conversion work. This change though is not permitted if it conflicts with any one of 13 given circumstances, referenced (a) to (m), and it is also subject to various conditions.
 5. The proposal relates to a large agricultural building that comprises 2 identical rectangular wings, which are built around concrete portal frames and joined along one of their long sides by a covered aisle. It is intended to demolish the northern wing and the aisle (the northern section), and to convert the remaining wing (the southern section) to 3 detached dwellings. This
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conversion would be achieved by removing everything apart from the portal frame and then forming the new homes within that frame. A first floor level would be inserted as part of the works.

6. The Council accepted there would be no conflict with circumstances (a), (c) to (f) and (j) to (m) in Class Q, and I have no reason to consider otherwise.
7. Concerning the remaining 4 circumstances, although the proposed flues were shown to project marginally above the ridge, the plans submitted originally did not indicate the ventilation caps now present. In any event, Drawing 3440.05A has been submitted omitting those features and so, accepting that amended plan, I consider the scheme would not conflict with circumstance (g).
8. Very little of the existing building would remain, but I have no reason to assume the portal frame would not suffice structurally. Circumstance (i) accepts the installation of replacement windows, doors, roofs or exterior walls and I consider what is before me now would not be stepping outside of this. Living accommodation could be formed with lesser works, but it does not follow that what is before me equates to works that are not '*reasonably necessary for the building to function as a dwelling house*'. Rather, given the size of the remaining portion of the building the works seem reasonable in this regard.
9. Turning to circumstance (b), this does not allow the conversion of an existing building when its cumulative floor space exceeds 450sqm. In this case the southern section has a floor area of 450sqm while the area of the northern section is 688sqm, giving a combined total of 1138sqm. The Council said it is this combined total that should form the basis of the assessment under circumstance (b). However, in the Appellants' view the area of the northern section should be discounted as it could be demolished at any time without the need for permission and does not form part of the proposal.
10. The northern section though is still standing and, when taken with the southern section, in my opinion it comprises '*the existing building*' with a combined floor area exceeding 450sqm. Furthermore, the demolition of the northern section would be an integral part of the scheme, because its removal would provide some curtilage for each of the houses, it would create a suitable rear aspect and it would ensure the living conditions were not unduly affected by adjacent agricultural operations. Whilst the Appellants said the northern section could be demolished at any time they accepted that '*would not be in the interests of good planning*' as they would not be able to secure an alternative use if the scheme for housing was ultimately unsuccessful. Its independent demolition in advance of the consideration of the proposal therefore seems unlikely.
11. Consequently, for these reasons I find the works would be to an existing building with a floor area exceeding 450sqm and so would be contrary to Class Q(b).
12. Finally, circumstance (h) does not permit development that '*would result in the building or buildings having more than 450sqm of floor space*'. The Council said that, when the new first floor level was taken into account, the 3 dwellings together would have a floor space of about 700sqm. In the Appellants' opinion though the first floors should be omitted from the calculation as the GPDO is primarily concerned with not increasing the size of the building. Therefore, the footprint is what should be used when considering this circumstance.

13. Again though I do not share the Appellants' opinion. It would have been open for the GPDO to refer to the building's footprint specifically if that was what it meant to address. However, the term '*floor space*' has been used and in my opinion the conversion, with its first floors, would result in the '*buildings* [used for Class C3 purposes] *having more than 450sqm of floor space*'. Therefore, I find that what is proposed would be contrary to Class Q(h). Indeed as the existing building cannot have a floor area greater than 450sqm under circumstance (b) and mindful that circumstance (g) says the works cannot extend beyond the existing external dimensions, if circumstance (h) solely concerned the building's footprint as contended by the Appellants it would be unnecessary.
14. In considering this appeal I have taken into account the Appellants' points about the intention behind Class Q in the GPDO and the way they have interpreted the wording with a view to achieve the Government's aims of promoting housing development. However, when assessing schemes against the GPDO to my mind there is little room for judgement or interpretation. Rather, reliance has to be placed on a reasonable definition of the precise wording given, and so I cannot support the Appellants' '*positive approach*' to these various circumstances if that goes beyond such a definition. Similarly it is not appropriate to consider what was *intended* by the terms when considering if something would be 'permitted development', as it would have been open to the Government to word any given clause differently or more explicitly had it so desired.
15. Moreover, the Appellants have said they could convert the houses without the first floors, and then add those later, thereby circumventing any conflict with circumstance (h). The scheme before me though is not for single storey dwellings and I have no plans to show how such houses would be laid out. In any event if a scheme is not 'permitted development' it cannot be considered as such just because, if the works were undertaken in a different manner, it would fall within the terms of the GPDO, even if the alternative approach would in some way result in an inferior outcome in planning terms.
16. I appreciate that the GPDO is intended to allow development to be pursued without needing the permission of the local planning authority, but that does not mean that it should allow all such development to proceed. Clearly as compliance is necessary with 13 circumstances it was always to be a guarded regime, and so there will be instances that cannot be deemed 'permitted development' even if that is for relatively slight reasons.
17. Accordingly, I conclude the proposal does not constitute development permitted under Class Q of Part 3 of Schedule 2 of the GPDO.

J P Sargent

INSPECTOR