

Appeal Decision

Hearing held on 26 October 2016

Site visits made on 28 July and 26 October 2016

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 21 November 2016

Appeal Ref: APP/E2734/W/16/3149251

Low Farm, Lowfield Lane, Sharow, Ripon HG4 5BN

- 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) (England) Order 1995 (GPDO).
 - The appeal is made by Mr David Dale against the decision of Harrogate Borough Council.
 - The application Ref 15/05685/PBR, dated 16 December 2015, was refused by notice dated 8 February 2016.
 - The development proposed is described as *"to convert a former agricultural barn and farmhouse to a single dwellinghouse, including limited associated rebuilding work"*.
-

Decision

1. The appeal is dismissed.

Application for costs and closing of the hearing

2. An application for costs was made by Mr David Dale against Harrogate Borough Council and is the subject of a separate decision.
3. In view of the time required for the site visit and considering the limited daylight hours, it was decided that the hearing would be adjourned for the appellant's costs application, Council response and appellant's final comments to be made in writing. The hearing was closed in writing after these submissions were made.

Other Procedural Matters

4. I have used the description given on the application, but without the phrase *"which is allowed within the relevant permitted development rights that we are proposing to utilise"* as this does not describe the development.
 5. Prior to the hearing the Council raised questions regarding the scaling and accuracy of plans and measurements. The appellant submitted Site Location Drawing L-PE-KD14-002 Rev C dated 27 July 2016 scale 1:250 at A3. This drawing supersedes earlier versions.
 6. In response to further requests for clarification the appellant submitted an email on 11 August containing information regarding the use of the former dwelling house, a 2016 update of the Survey Report by McGregor Lang Ltd and appeal decision APP/E2734/A/04/1155057. The Council raised no objection to
-

both the submission and content, and the information was considered at the hearing.

The GPDO and Main Issues

7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for certain classes of development. These are described as permitted development and are subject to limitations and restrictions. Some classes of permitted development are also conditional upon a prior approval procedure having been followed.
8. In this case the prior approval application is made under the provisions of Schedule 2, Part 3, Class Q of the GPDO. Class Q provides permitted development rights to a change of use of an agricultural building and any land falling within its curtilage to a use falling within Use Class C3 (as a dwelling) together with building operations reasonably necessary to convert the building to such a use. This Class is also subject to limitations, restrictions and conditions.
9. The Council refused the appeal application because it concluded that *"the proposal is not permitted development due to the extent of the curtilage as proposed that would in practice be utilised by any occupier of the proposed dwelling and the limited curtilage to the south that is proposed to overcome this issue would be set in such close proximity to the main south elevation of the property as to result in an impractical proposal given the design of the proposed dwelling"*.
10. Although the reason is primarily concerned with a single issue, that of the curtilage, the Council's witness advised the hearing that when considering a prior approval application it was the practice of the Council to determine the prior approval matters even where the Council determined that the proposal was not permitted development, as in this case. However, as the requirement for prior approval is worded as a condition attached to the grant of permission by Article 3(1) of the GPDO, the prior approval of matters specified in paragraph Q.2 only become relevant if the proposed development falls within the permitted development right. I shall deal with the appeal on this basis.
11. The Council does not take issue with impacts/risks arising from highways and transport, noise, contamination, flooding risks or design of the dwelling. From what I saw on my site visits and from the submitted information, I find no reason to disagree.
12. Therefore, I consider that the main issues in this case are:-
 - (1) Whether or not the proposal amounts to permitted development, and
 - (2) If the proposal does amount to permitted development, then whether or not the location and siting of the proposed curtilage makes it impractical for the building to change from agricultural use to a use falling within Class C3.

Reasons

- (1) *Whether or not the proposal is permitted development*
Curtilage of the agricultural building

13. By way of definitions some limitations to the Class Q permitted development right are provided in Schedule 2, Interpretation of Part 3, paragraph X of the GPDO. This includes a definition of "*curtilage*" for the purposes of development under Class Q as "*(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 occupied by the agricultural building, whichever is the lesser*".
14. The appellant calculates that the land immediately around and closely associated with and serving the purposes of the building totals approximately 950m² and the area occupied by the building is 211m². Therefore the appellant relies upon provision "(b)" and a red line indicates the proposed curtilage on Drawing L-PE-KD14-002 Rev C. At the hearing the Council's witness did not dispute that the area of the curtilage indicated is 207m², so less than 211m², and that the appellant had a right to elect provision (b).
15. On the information before him at the hearing, the Council's witness therefore accepted that in this way the proposal met the requirements of paragraph X. Nonetheless, he maintained that the curtilage on the south side of the dwelling would be so limited that it would be essential that the occupiers would need a larger area.
16. There is an area of land beyond the red line and within a low wall. In the case of APP/X/1545/W/15/3007941, on another site, the Inspector found that a Class Q prior notification proposal was not permitted development because a larger area would be used. In that case the drawings clearly indicated planting and a private amenity area beyond the red line for the proposed dwelling.
17. The drawings for the proposal I am considering do not include any land beyond the red line and the appellant maintains he does not propose or intend any greater area. In order to ensure the curtilage is enforceable the appellant proposes a 2m high deer fence along this boundary. Other means of fencing could be used. Planning permission would be required for an extension to the curtilage and the Council has enforcement powers for unlawful extensions to the curtilage.
18. The Council draws my attention to another appeal decision, APP/V3310/A/14/2227802, where the Inspector found that the red line was drawn so tightly around the footprint of the building that domestic use of land beyond the red line would be essential. In the appeal I am considering the drawings indicate that the area within the red line would allow the occupiers access around the dwelling. On the south side the curtilage would allow an area approximately 2m deep which would allow the occupiers to open windows and external doors. Therefore I find scant evidence to say that the curtilage is so limiting on the south side that it would be essential that the occupiers would require a larger curtilage.
19. At the hearing the Council's witness confirmed that their concerns regarding the merits of the amenity space provided by the proposed curtilage relate more to the assessment of the prior approval application under condition Q.2-(1)(e), as to whether (in the words of the GPDO) "*the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3*". Having regard to the advice

on the Planning Practice Guidance (the PPG) at paragraphs 107 and 109¹ regarding the conditions attached to the Class Q permitted development right and the interpretation of the words impractical and undesirable, and I agree.

20. However, this is not an end of the matter, because the Class Q permitted development right and curtilage limitation in paragraph X relate to an *"agricultural building"*. Paragraph X defines an agricultural building as *"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"*. Class Q.1(a) also advises that development is not permitted if the site was not used solely for agricultural purposes on 20th March 2013 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.
21. The application form describes the proposal as *"to convert a former agricultural barn and farmhouse to a single dwellinghouse..."* Addressing the above requirements directly, paragraph 3.1.5 of the appellant's statement of case advises that the building is currently derelict, and its last use was *"solely for agricultural purposes, namely as a barn for housing agricultural livestock as well as storing the associated feedstock, farm machinery, with the remainder of the building forming an agricultural workers dwelling"*.
22. The parties agree that the farmhouse comprises 25.8m² of the 211m² footprint of the building, and that the use as a dwelling has been abandoned. It is located within an agricultural unit, surrounded by farmland and attached to an agricultural barn. To use it for agricultural purposes would not require planning permission.
23. At the hearing the appellant and his agent told me that there had been some storage of machinery in the back of the dwelling; pesticides, boxes for potatoes and feed for stock had all been stored in the building, perhaps 20 to 30 bales of hay. But on both of my visits I saw little evidence that the dwelling was, or had been, in use as an agricultural building.
24. In 2005 an appeal proposal for partial reinstatement and partial conversion of a house and barn to a dwelling was dismissed. At paragraph 9 the Inspector states *"At the hearing there was agreement by both parties that the residential use was abandoned about 20 years ago and that since then the buildings have been used in connection with agriculture for short periods or have been largely unused"* (APP/E2734/A/04/1155057).
25. Whilst it may be unlikely that the building could have been used for another use, it is possible that it could have become a building of nil use and I find that the evidence is insufficient to demonstrate that the building to which the application relates is an agricultural building and used solely for an agricultural use as part of an established agricultural unit at the time of the application and on 20th March 2013 or when it was last in use. At the hearing the appellant's agent accepted that if I were so to conclude, then the limitation provided by Class Q1 in respect of curtilage would only apply to a smaller area, less than 211m².

¹ <http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/permited-development-rights-for-the-change-of-use-of-agricultural-buildings> - see Paragraphs: 107 and 109 Reference ID: 13-107-20150305 and: 13-109-20150305

26. I conclude that the proposed curtilage of 207m² does not satisfy either of the definitions for the area of curtilage specified in Schedule 2, Part 3, paragraph X of the GPDO and the proposal is not permitted development.
27. A number of other appeals were drawn to my attention, including APP/C3620/W/15/3003366, APP/P1133/W/15/3003997, APP/Y2736/W/14/3002184, APP/J1535/W/15/3029713. I considered them all but this issue is very much one that depends on the details of the appeal scheme before me, which I have determined on its own merits.

Structural elements

28. The proposed four bedroom dwelling would include first floor accommodation across the area of the former dwelling and a large section of the agricultural barn (areas 3 and 6 in the Report).
29. Although Class Q(b) provides for the building operations reasonably necessary to convert an agricultural building to a dwelling paragraph 105 of the PPG includes advice that *"the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling..."* and *"It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for the residential use that the building would be considered to have the permitted development right."*²
30. The application is supported by a report based upon a visual structural inspection by McGregor Lang Structural Engineers (the Report). It was first prepared in 2004 and updated in 2016 for this appeal. In the discussion section it states that *"Generally the property would appear in a suitable condition for consideration for refurbishment back into habitable accommodation. Particularly considering that the loading proposed to be added to the structure is no greater than that original[ly] adopted during the previous occupancy of the property"*.
31. In response to risks associated with the presence of gypsum and post glacial subsidence hollows in the area the Report confirms *"We would therefore be of the opinion that this property, with suitable specifications from the design team, would be suitable for re-conversion back to a habitable property."* The Planning Officer's report explains that the Council did not object on this matter on the basis of this advice.
32. However, the appellant informed the hearing that he has owned the building for over 30 years and that the barn had not had a first floor. Whilst it may have had a hay loft, it had not had a full first floor, a high level window had been for ventilation purposes only, and the agricultural barn had never been occupied as habitable accommodation. At the second site visit I noted that only some sections of the barn walls had holes where purlins may once have hung, and it appeared to me that the top of the cart opening shown on the application drawings would have been higher.

² <http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/permitted-development-rights-for-the-change-of-use-of-agricultural-buildings> - see Paragraphs: 105 and 109 Reference ID: 13-105-20150305 and: 13-109-20150305

33. At the hearing the appellant's agent was confident that the Report provides confirmation that the building is capable of conversion to habitable accommodation. There was much debate about what was meant by these statements in the Report and in particular if the phrase "*re-conversion back to a habitable property*" applied to just the former dwelling or the agricultural barn also. It was all conjecture as the structural engineers who wrote the report did not attend the hearing or either of the site visits.
34. I am not persuaded that there is sufficient evidence to say that the agricultural barn had a first floor. Some of the required building works would be internal, but I am not persuaded by the available evidence that works would not go beyond what could reasonably be described as works for the maintenance, improvement or other alteration of a building. Nor am I persuaded that there is sufficient certainty and clarity in the Report that the areas of the building that were not previously occupied as a dwelling are strong enough to take the loading of the proposed four bedroom two storey residential dwelling. I am strengthened in my conclusion by a note in the introduction to the Report that "*No analysis of the structural elements has been carried out to prove the adequacy of these elements*".
35. I conclude that the evidence does not demonstrate that the existing building is capable of functioning as the two storey dwelling described in the application without requiring building operations that would go beyond works that could reasonably be described as conversion of the existing building, or that the existing building is structurally strong enough to take the loading of the external works which would be required for residential occupancy of the proposed dwelling. Therefore the proposal does not benefit from the permitted development right for the change of use of an agricultural building to a dwelling provided in Schedule 2, Class Q of the 2015 GPDO. However, as I have already found the proposal not to meet the curtilage requirements and is not permitted development for that reason, my conclusion on structural matters is not determinative in this case.

(2) The practicality of the curtilage.

36. The question of the practicality of the location and siting of the proposed curtilage pertains to the merits of the prior approval application. However, as I explained in paragraph 10 above, the prior approval of matters specified in paragraph Q.2 only become relevant if the proposed development falls within the permitted development right.
37. In the light of my conclusions above, that is not the case here, and I am not required to assess this issue.

Conclusions

38. In this case I have found that the permitted development right for the conversion of an agricultural building to a dwelling house does not apply to this building.
39. This is because the proposal does not satisfy the requirement for the area of curtilage specified in Schedule 2, Part 3, Class X of the GPDO for the purposes of Class Q development. I also found that the evidence does not clearly demonstrate that the existing agricultural barn is capable of conversion to a functioning dwelling without the construction of significant new structural

elements and building operations that would go beyond works that could reasonably be described as conversion of the existing building, however as I had already found that the proposal did not satisfy the curtilage requirements, this matter was not determinative.

40. Having found that the proposal was not permitted development, it was not necessary to assess the merits of prior approval application regarding siting and location.

41. Therefore, and having considered all other matters raised, the appeal is dismissed.

Helen Heward

PLANNING INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr David Dale	Appellant
Mr Kenny Dhillon Pg Cert BSc Hons MRTPI	Principal Planner ADAS
Mr Mark Sturgess	MS Architects

FOR THE LOCAL PLANNING AUTHORITY

Mr Mike Parkes BA Hons	Senior Planning Officer Harrogate Borough Council
------------------------	---

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement of Common Ground
2. McGregor Lang Sketch Ground Floor Plan Ref No ML00818 26.02.04