
Appeal Decision

Site visit made on 16 January 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 31 January 2017

Appeal Ref: APP/C3105/W/16/3160946

Field Barns, Whichford Road, Hook Norton, Oxfordshire

- 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 2015.
 - The appeal is made by Ms J Taylor against the decision of Cherwell District Council.
 - The application Ref 16/00281/Q56, dated 8 February 2016, was refused by notice dated 18 April 2016.
 - The development proposed is change of use of 3 barns to 3 dwellings including operational development.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Ms J Taylor against Cherwell District Council. An application for costs was also made by Cherwell District Council against Ms J Taylor. These applications are the subject of separate Decisions.

Procedural Matters

3. The site address provided by the application form has been amended in subsequent documents. I have adopted the site address given by the appeal form accordingly.
4. Planning Practice Guidance (PPG) advises that the starting point for Schedule 2, Part 3, Class Q of the GPDO¹ is that the permitted development rights grant planning permission, subject to the prior approval requirements under paragraph Q.2(1). The appellant states that the timing of the decision was outside of the 56-day deadline for the Council to notify an applicant as to whether prior approval is given or refused set out in paragraph W(11) of the GPDO, as applicable to paragraph Q.2(1). However, the relevance of that matter to the outcome of the appeal is dependent upon firstly a determination as to whether the proposal would be permitted development under Class Q.
5. The Council have confirmed withdrawal of the first reason for refusal following a separate prior approval application granted for a different proposal relating to Barn 1 only, as identified on the submitted plans, which addressed concerns with respect to the established agricultural unit. Consequently, there is no dispute that the current proposal meets the requirements of Schedule 2,

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

Part 3, Class Q, paragraphs Q.1(a)- (f), (h) and (j) - (m) of the GPDO. However, the Council's concerns remain with respect to the second reason for refusal in terms of non- compliance with Class Q, paragraphs Q.1(g) and Q.1(i).

6. The appeal submission includes revised plans (drawing nos. 5988-21 and 5988-22) modified after the Council made its decision subject to this appeal. The amendments to the scheme relate specifically to the roof, wall and window arrangement of the western end of Barn 1 to ensure consistency with a separate prior approval application granted by the Council.
7. The Planning Inspectorate's guidance² states that *'if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh application'*. Furthermore, the guidance also states that *the 'appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'*. In this regard, the Wheatcroft Principles³ arise from a High Court judgement which considered the issue of amendments. It established that the main, but not the only, criterion on which the judgement should be exercised is whether the development is so changed that to grant it would be deprive those who should have been consulted on the changed development of the opportunity of such consultation. An integral part of the legal test is the issue of fairness to third parties.
8. Notwithstanding the above, prior approval applications as to whether the proposal meets the criteria under paragraph Q.1 of the GPDO to benefit from the permitted development rights under Class Q, are considered specifically on a legal test whereby the issue of consultation is not decisive. The amendments seek to address the Council's second reason for refusal, in so far as the extension previously proposed to Barn 1 was not considered to be permitted development relative to paragraph Q.1(g). In the particular circumstances of this case, given that a prior approval application has been granted separately by the Council incorporating the identified amendments to Barn 1, I do not feel that any party would be prejudiced. I, therefore, accept the revised plans and determine the appeal with regard to drawing nos. 5988-21 and 5988-22.

Main Issues

9. The main issues are:
 - whether the proposal would be permitted development, with particular regard to whether the requirements of Class Q(b) in terms of paragraphs Q.1(g), in relation to Barn 1 only, and Q.1(i) of the GPDO would be met, and;
 - If so, whether or not prior approval would be required in accordance with the condition set out in paragraph Q.2 (1) of the GPDO, including whether notification was provided in accordance with the 56-day deadline set out in paragraph W(11) of the GPDO.

² Procedural Guide – Planning appeals – England (published 23 March 2016) - Annex M

³ Derived from Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harborough DC (1982) P&CR 233

Reasons

Whether the proposal would be permitted development

10. The appeal site is accessed from a track which leads from Whichford Road. It consists of 3 barns within an established agricultural unit and appears to have been recently in agricultural use.
11. Barn 1, as identified on the submitted plans, is a single storey barn located to the northern edge of the site, which had an open front that is now timber boarded, stone walls, a profiled metal sheet roof and a concrete floor. Barn 2 is a dutch barn located to the west of the site, which is open at both ends with low concrete block side walls, a reinforced concrete floor and a semi-circular metal sheet roof. Barn 3 is a dutch barn located to the east of the site, which is also open at both ends with reinforced low concrete side walls and floor, together with a semi-circular metal sheet roof.
12. The GPDO states at paragraph Q.1.(i) that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or external walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations.
13. The PPG⁴ states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. Nonetheless, it indicates that, for the building to function as a dwelling, some building operations which would affect the external appearance of the building and which would otherwise require planning permission would need to be undertaken and should be permitted. The PPG further clarifies that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Consequently, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide the residential use that the building would be considered to have the permitted development right.
14. Structural reports prepared by Andrew Baxter Civil & Structural Engineering Consultant Ltd dated 28 January 2016 and 22 June 2016 indicate that in terms of Barn 1, although the timber trusses appear to be in satisfactory condition and can be retained, a new slate roof should be laid on new battens, felt, rafters and purlins. These recommendations are carried forward within the submitted plans before me, including the drawing nos. 5988-21 and 5988-22, with the annotated Barn 1 materials indicated as including a '*replacement rafter structure*'. The annotations on the submitted plans also include replacement of existing posts and straddle stones on the south elevation of Barn 1. Based upon observations of Barn 1 during the site visit, I have no reason to consider that the recommendations of the structural reports are not accurate. In particular, a number of the existing posts were in very poor condition.
15. Having regard to the above, rafters and purlins, together with posts and straddle stones, are structural elements of the timber frame and roof structure

⁴ What are permitted development rights?, Paragraph: 105 Reference ID: 13-105-20150305
(Revision date 05 03 2015)

- of Barn 1. As such the replacement and / or addition of such elements would consist of structural alterations that would fall outside of those permitted by Class Q(b) and paragraph Q.1(i) having regard to the PPG.
16. The amendments to the proposals for Barn 1 indicated in the revised plans would ensure compliance with paragraph Q.1(g). Furthermore, the installation and replacement of exterior walls, roofs, doors and windows, together with provision of water, drainage, electricity, gas or other services would fall within building operations reasonably necessary for the building to function as a dwellinghouse.
17. Notwithstanding the above, as previously stated, the identified works required to the existing timber frame and roof structure of Barn 1 to facilitate the conversion to residential use exceed those identified in paragraph Q.1(i) and therefore permitted by Class Q(b). The evidence before me, therefore, indicates reasonable doubt that the existing building would be structurally strong enough, without structural alterations to the existing timber frame and roof structure, to take the loading that comes with the external works to provide for residential use. It, therefore, follows that the proposals before me relating to Barn 1 would not benefit from the permitted development rights under Class Q of the GPDO.
18. In reaching the above findings, I have taken into account that the Council have granted a separate prior approval application required under Class Q of the GPDO relating specifically to Barn 1. Nevertheless, the existence of such a prior approval does not remove the requirement that I reach my own conclusion based upon the proposal and evidence before me.
19. Turning to Barns 2 and 3, the structural reports indicate that the concrete block side walls, semi-circular shape of supporting steelwork and the existing floor could be retained as part of a conversion to residential use and no strengthening of walls or foundations would be required. The Council have provided no contrary evidence in this respect. However, there is dispute between the parties with respect to the meaning of the reference in the structural reports that the roofs to the dutch barns can be retained '*in profile*'. In this regard, the structural reports specifically indicate that the supporting elements should be updated.
20. With regard to the above, the submitted plans, including drawing nos. 5988-21 and 5988-22, incorporate annotated materials for Barns 2 and 3 which indicate that the proposal would involve a '*new curved roof structure*' with a new roof covering, together with glazed screens to enclose the front and rear of each barn. To my mind, the indication of a new roof structure introduces reasonable doubt that Barns 2 and 3 as existing, would be structurally strong enough to take the loading associated to external works reasonably necessary to provide for residential use. The replacement of the existing roof structure of Barns 2 and 3, as indicated on the submitted plans, would consist of structural alterations that would fall outside of those permitted by Class Q(b) and paragraph Q.1(i) when having regard to the PPG.
21. In any case, replacement of supporting elements, even if relating to only the attachment of the roof structure to the concrete block walls, could necessitate temporary removal of at least part of and possibly all of the existing roof frame. During my visit I observed that the timber beams of Barn 3 in particular, to which the steel frame of the roof structure attaches to the

reinforced concrete walls, had sections in very poor condition which would require replacement. Such works would necessitate temporary removal of the majority or all of the existing roof frame. Furthermore, if a new roof structure is added, only the concrete block side walls and floor of Barns 2 and 3 would be retained. Having regard to the recent High Court judgement in the Hibbitt case⁵ and the associated appeal decision⁶, these works would exceed what could reasonably be described as conversion and would be so extensive as to comprise rebuilding. It, therefore, follows that the proposals before me relating to Barns 2 and 3 would not benefit from the permitted development rights under Class Q of the GPDO.

22. In reaching the above findings relating to Barns 2 and 3, I have taken into account that the appellant has indicated in the statement of case that it is the intention that the existing roof structure of both buildings would be retained and self-supporting materials could be utilised. However, such an approach is not consistent with the proposals identified within the submitted plans upon which this appeal is necessarily determined. A condition could not be reasonably imposed to necessitate the retention of the roof structure of Barns 2 and 3, as such an approach is not supported by the evidence before me and would require material alterations to the proposals in the submitted plans. Given the magnitude of the works and their structural nature I am not satisfied that Barns 2 and 3 are capable of conversion so as to function as dwellings.
23. A number of prior approval applications relating to Class Q of the GPDO granted by the Council and an appeal decision⁷ have been drawn to my attention by the appellant. The decisions relate to the interpretation of Class Q, paragraph Q.1 (i) and the PPG, including accompanying information relating to some of the proposals. I have taken the decisions into account and in most cases there are some parallels with the proposal before me. Nevertheless, there are differences in terms of the timing of the decisions preceding the Hibbitt judgement, the individual circumstances of the agricultural buildings and the conversion works required. I, therefore, have reached my own conclusions on the appeal proposal on the basis of the evidence before me.
24. In order to benefit from the permitted developments rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must only involve building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i). Based on the evidence before me and my own observations of the 3 barns, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q.
25. I conclude that, based on the evidence before me, the proposed change of use to the 3 barns would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated guidance within the PPG, and therefore is not development permitted by it.

⁵ Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

⁶ APP/P3040/W/16/3142052 - Dismissed - 19 May 2016

⁷ APP/L3245/W/16/3143625 - Dismissed - 27 May 2016

Prior approval

26. Given my conclusion that the proposed change of use would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required as it would not alter the outcome of the appeal.

Conclusion

27. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
28. The appeal is, therefore, dismissed.

Gareth Wildgoose

INSPECTOR