
Appeal Decision

Site visit made on 28 November 2016

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 1 March 2017

Appeal Ref: APP/G5180/X/16/3151746

Knockholt Farm, New Years Lane, Knockholt, Sevenoaks, Kent TN14 7PQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alan Howell against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/01932/PLUD, dated 5 May 2015, was refused by notice dated 10 December 2015.
 - The application was made under section 192 of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is operational development associated with change of use to residential in accordance with details submitted 14/04750/FLXAG.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Alan Howell against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal concerns an open-sided portal frame building on land to the west of New Years Lane. An application (ref:DC/14/04750/FLXAG) was made on 5 December 2014 as to whether the prior approval would be required for the change of use of the barn to use as a dwellinghouse, along with building operations reasonably necessary for the conversion. At that time Class MB of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO)¹ was in force and permitted development consisting of (a) a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule. The Class was subject to a

¹ The 1995 GPDO remained in force at the date of the application. It has since been mostly revoked by the 2015 GPDO although Class Q refers to the same development and contains the same limitations.

number of limitations set out in paragraph MB.1 and conditions set out in paragraph MB.2.

4. The application was refused on 10 February 2015 on the basis that prior approval was required. However the Council accept that was beyond the 56 days notification period. The consequences of an application not being determined by the Council within the prescribed period, that is 56 days from the receipt of the application, is that the Council can no longer control the matters covered by the prior approval procedure. That being so, a development proposal that otherwise falls within the class limitations can lawfully proceed, subject to the relevant time limitation.
5. Nevertheless, the Council suggest that the existing building is incomplete in that it has not been completed in accordance with the details submitted at Agricultural Prior Approval stage or used for its stated purpose. Given that they question whether it comprises an agricultural building for the purposes of the GPDO. There is no dispute that the building is not complete as suggested. However, as I saw from my site visit, and as set out below, it is a building and there is no claim that it is unlawful. Therefore, without evidence to the contrary, I see no reason to not consider it as a building for the purposes of Class MB.
6. In that light, and regardless of the appellant's view that the development is lawful because the 56 day period had expired, I must satisfy myself as to whether or not the proposed development falls within any of the other class limitations. The Council cite that the LDC refusal was based on the works proposed exceeding that permitted under Class MB and that the agricultural activity at the site does not constitute an agricultural trade or business.
7. In addition during the appeal process the Council submitted a recent court judgment *Hibbitt*² to which the appellant has had an opportunity to respond. The appellant's view in part is that the judgment cannot apply in this case as it followed the initial 56 day period and it is the legality of the situation at that time, and not now, against which the conversion should be determined. I disagree; the GPDO remains unchanged as from the date of the LDC application. At that time there was no judgment regarding the interpretation of what is 'reasonably necessary' in terms of conversion works. However, *Hibbitt* has shone the light on how that should be interpreted today and, as a matter of fact, how it should have been interpreted on the day the LDC application was made. It is therefore relevant to the appeal before me and I will address it below.

Main issues

8. Taking the above into consideration the main issues are:
 - a. Whether the agricultural activity at the site is an agricultural trade or business and;
 - b. Whether the works to convert the building to a dwellinghouse would exceed that permitted under the GPDO.

² *Hibbitt and another v Secretary of State for Communities and Local Government and another* [2016] EWHC 2853 (Admin)

Reasons

Agricultural Activity

9. At the time of the LDC application subject of this appeal the 1995 GPDO was superseded by the Town and Country Planning (General Permitted Development) Order 2015 (the 2015 GPDO). Schedule 2, Part 3, Class Q of the 2015 GPDO defines development consisting of a change of use of a building and any land within its curtilage for use as an agricultural building to a use falling within Class C3 as permitted development. That is when the site was used solely for an agricultural use as part of an established agricultural unit.
10. There is no dispute that there is an agricultural use on the site and I accept that it must be demonstrated that there needs to be an element of trade or business and to that end there is no statutory test. However the appellant has submitted a number of documents including letters from an accountant and vet both of which refer to the appellant's livestock farming business. Whilst these letters have not been tested they are undisputed. In addition the Council considered the building to be permitted development under Part 6 of the GPDO at the time prior approval was granted for it in July 2012 (ref:12/00858/AGRIC). It follows therefore that the Council would have considered it to be reasonably necessary for the purposes of agriculture within that unit at that time.
11. Furthermore the Planning Practice Guidance (PPG) sets out that for applications concerning an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. It is reasonable to apply that guidance to the matter of the existing use here.
12. Therefore I find, on the evidence before me and on the balance of probabilities, that the site is part of an established agricultural unit for the purposes of Class Q.1. In coming to that view I have had regard to the appeal decision submitted by the Council (ref:3005362) where the Inspector found there was insufficient information to come to a view that the use in that case was little more than a hobby and not a trade or business. However in that appeal it is clear the appellant referred in evidence to there not being a trade or business which introduced an element of ambiguity.

The works required

13. I saw from my site visit that the existing structure consists of a portal frame building with corrugated roof. All sides were open save for some temporary Heras style fencing with netting and sacking attached. The floor was laid to earth and various items were being stored alongside a small temporary sheep pen. Concrete pads at the base of each steel upright were visible and I have no reason to dispute the appellant's structural inspection report which found it to be in sound condition. I also have no reason to dispute the finding that the steel frame would satisfactorily support the loadings associated with the installation of lightweight walls, cladding, insulation and domestic finishes.
14. Therefore, the existing structural elements would be retained and there is no dispute that any internal elements for *the maintenance, improvement or other*

*alteration of any building works*³ would not be development in terms of the Act. Furthermore the new walls would be supported by the existing frame. In addition the appellant sets out that new floors would be suspended and not structural although that must be tempered given the structural report confirms that no ground investigations were undertaken and as such there were no recommendations regarding substructure works.

15. Class Q(b) of the 2015 GPDO refers to building operations reasonably necessary to convert the building. That is qualified by the PPG which states: *..that for the building to function as a dwelling some building operations which would affect the external appearance of the building , which would otherwise require planning permission, should be permitted. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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 residential use that the building would be considered to have the permitted development right.*
16. I accept the argument that it cannot be that the building must be capable of functioning as a dwelling in its existing state, in order to benefit from permitted development rights. However, whether or not the proposed works go beyond the scope of that permitted is, as borne out by the judgment in *Hibbitt*, a matter of fact and a degree. In that judgment the Court held that the concept of "conversion" is in the overarching provisions of Class Q. In this case, and taking into account the aforementioned acceptance of the capability of the existing building to accept the loading of the proposed works, the works would be extensive.
17. Whilst the need for substantial work is not unusual for developments by way of permitted development, here they would involve new walls on all sides where none have previously existed, a new roof with skylights and the formation of new ground and first floors. All that would remain of the existing building would be the steel frame. That would, as a matter of fact and degree, go a long way beyond what might sensibly or reasonably be described as a conversion. Indeed, if one were to look in isolation at what would remain (the steel frame) and compare it to what would be constructed, it would be reasonable to come to the view that the works carried out were more than conversion and would be so extensive as to amount to a 'fresh build' as set out in *Hibbitt*.
18. For these reasons I conclude that the works proposed would not, as a matter of fact and degree, be reasonably necessary to convert the building to a dwelling under Part Q. They would not therefore be permitted development as set out in Class Q(b).
19. In coming to that view I have considered all of the appeals brought to my attention by both parties. As is clear from those decisions, permitted development under Class Q must be determined on a case by case basis. I do not have full details of each case but it is apparent that each Inspector has

³ Paragraph 55 of the Town & Country Planning Act 1990

determined, as have I, on the information before them and I find nothing to lead me to a different conclusion. In the same way I have considered the planning permissions that have been given since *Hibbitt* and brought to my attention by the appellant. I do not have full details and there is nothing before me to suggest they were granted in the light of that judgment. In any event I have, as set out, determined this appeal on its own merits.

20. I also took the opportunity to view the barn currently being converted at nearby Blueberry Farm and accept there are similarities, although whilst the photographs submitted show an open sided barn, it is not clear, whether that was always the case and I note there is a concrete floor in place. The appellant has also referred in detail to a conversion at Warren Farm but I note from the detail submitted that barn was completely enclosed and the existing floor plate was to be retained. Again I find nothing to lead me to a different conclusion.

Other matters

21. Finally, I accept that there is some support for the development locally as well as some concerns. However, the planning merits of the case do not fall to be considered under a lawful development appeal.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use/conversion to residential was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard Perrins

Inspector