

Appeal Decision

Site visit made on 6 February 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 15th March 2017

Appeal Ref: APP/C1950/W/16/3161242

Ponsbourne Farm, The Drive, Newgate Street SG13 8QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr Stephen Bryant against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2016/0375/PN10, dated 1 March 2016, was refused by notice dated 9 May 2016.
 - The development proposed is prior approval for a Change of Use of an agricultural building to a dwellinghouse (Use Class C3) and associated operational development.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have used the Council's description of the development in reaching my decision as it more fully describes the details of the development than that given on the original planning application form. The appellant's appeal form also makes reference to the updated description. I shall determine the appeal on this basis accordingly.

Background and Main Issue

3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order (England) 2015 (GPDO) permits the change of use of an agricultural building and any land within its curtilage to a residential use, along with building operations reasonably necessary to convert the building. There is no dispute between the parties that the development would comply with the qualifying criteria of Class Q.1 with the exception of criteria (g) and (i). On the evidence before me, I have no reason to come to any alternative view.
 4. Schedule 2, Part 3, Paragraph W of the GPDO sets out the prior approval process. It states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.
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5. On that basis, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO with particular reference to whether the works required to convert the building to a residential use go beyond what is reasonably necessary and whether the operational development extends beyond the external dimensions of the building.

Reasons

6. The appeal site comprises a barn building located at the rear of a linear development of residential properties within Newgate Street Village. The barn is of a timber frame construction supporting a corrugated steel roof and enclosed by a combination of brick and concrete block walls on three sides and open on one side. The building is set back from the road along a long unmade track from The Drive to the east of the appeal site.
7. Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than: (i) the installation or replacement of — (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building.
8. Paragraph 105 of the Planning Practice Guidance (PPG)¹ provides further clarification and makes a distinction between structural and non-structural works. The guidance states that 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.
9. The proposal is to convert the existing barn building into a single dwelling house with a small courtyard to the rear. It would involve the construction of new external walls between timber supports on the open south-west elevation of the building and on the south-east elevation adjoining the proposed garage. The external walls would incorporate openings for doors and windows.
10. The Council considers that the barn would not be structurally strong enough to take the loading which comes with the external works to provide for a residential use. The Council considers that the proposal would result in the requirement for a new structural wall to support the roof above the proposed garage as no existing support structure would be available and a new floor would be required.
11. The appellant points out that this wall is not a structural element as the roof would remain supported by the existing timber frame of the building. The appellant states that the barn has a partial concrete floor and partial earth floor and that the new floor is internal and would not be a structural element. The appellant argues that a new concrete floor does not need to be covered by the permitted development right, by reference to s55(2)(a) of the Town and Country Planning Act 1990.

¹ Planning Practice Guidance: Paragraph 105 Reference ID: 13-105-20150305

12. It is correct that works falling within s55(2)(a) do not need to be covered by Class Q, as they do not constitute development and so do not need to be covered by the planning permission granted by Article 3 and Class Q of the GPDO. However, it should be noted that s55(2)(a) only applies to works of "maintenance, improvement or other alteration", and Class Q only relates to works reasonably necessary to convert the building. Case law indicates that there is a difference between maintenance and rebuilding.
13. Therefore, new foundations are also likely to go beyond the maintenance / improvement which would be permitted by s55(2)(a) of the Town and Country Planning Act 1990, as they would lead to the construction of a new building and so fall outside the permitted development right.
14. Clearly the case involves matters of judgement. However, in the absence of any convincing evidence to the contrary, there is considerable doubt in my mind as to whether the existing timber frame and the partial concrete floor is capable of taking the loading associated with the new external works.
15. Whilst full details have not been supplied, I consider, on the balance of probabilities, that the works to add a new external wall and floor are both likely to constitute new structural elements. This is explicitly precluded by advice in the PPG.
16. In relation to Paragraph Q.1.(g), the Council state that the roof lights within the proposed drawings extend beyond the external dimensions of the existing building in height by approximately 0.2m. The development would then result in the external dimensions of the building extending beyond the external dimensions of the existing building and as such fall outside the limitations set out in Paragraph Q.1.(g). Whilst I recognise that the appellant is willing to amend the roof lights, this would be a material change to the proposal before me. In any event, I am required to consider the proposal on the basis of the same details that were before the Council when it made its decision.
17. For the above reasons I conclude that the proposal would not comply with the limitations and restrictions specified as being applicable to the proposed development. As such, it could not benefit from deemed permission under Class Q.

Other matters

18. I note the other developments in the area drawn to my attention by the appellant. On the basis of the limited evidence provided I am not convinced that their circumstances are compellingly similar to those of the present appeal proposal. The examples provided have different development and locational characteristics to the appeal scheme. I therefore accord them limited weight as precedents in this case.
19. I have noted the issues raised by the appellant regarding the way in which the application was processed by the Council and that the objections to the proposed development were not raised by the Council on the previous prior application on the appeal site². However, these are material considerations to which I can only attach limited weight in making this decision.

² 6/2015/2345/PN10

20. Whilst I recognise that the proposal would boost the supply of housing in a sustainable location in accordance with the National Planning Policy Framework, these benefits do not outweigh my findings on the main issue I have identified in this case.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR