
Appeal Decision

Site visit made on 20 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 17 March 2017

Appeal Ref: APP/X1355/W/16/3160459

Land and Buildings to the East of Stockley Lodge, Stockley Lane, Oakenshaw, County Durham

- 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 Mr Malcolm Wass against the decision of Durham County Council.
 - The application Ref DM/16/01219/PNC, dated 13 April 2016, was refused by notice dated 16 June 2016.
 - The development proposed is 'prior approval of proposed change of use of agricultural building to 1no. dwelling house (use class C3)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address provided by the application form has been amended in subsequent documents and a description of development was not included on the application form. I have adopted the site address and the description of development given by the appeal form accordingly.
3. Planning Practice Guidance (PPG) advises that the starting point for Class Q is that the permitted development rights grant planning permission, subject to the prior approval requirements under paragraph Q.2(1). However, it is necessary to determine whether the proposal falls within permitted development. Class Q of the GPDO¹ states that development consisting of Q(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule of the Use Classes Order²; and Q(b) building operations reasonably necessary to convert the building, is permitted development. However, such a determination is subject to accordance with the requirements of paragraph Q.1.
4. There is no dispute that the current proposal meets the requirements of Schedule 2, Part 3, Class Q, paragraphs Q.1(a)- (f), (h) and (j)-(m) of the GPDO. Based on the evidence before me and my observations of the building and the site, I have no reason to take a different view with respect to compliance with paragraphs Q.1(a)- (f), (h) and (j)-(m) of the GPDO. However, the Council refused the application for prior approval because it

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

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

considered that the proposed building would not accord with Class Q(b) by reason of consisting of building alterations other than those permitted under paragraph Q.1(i) and has also expressed concern with respect to the proposal's compliance with Q.1(g).

5. The Council have also indicated, in any case, that prior approval would be required with respect to transport and highway impacts. In this regard, it is the Council's view that it is not possible to achieve the necessary western visibility from the existing access onto Stockley Lane and therefore, that the proposed dwelling would not be served by a safe vehicular access given that a new access could not be formed under Class Q. In response, the appellant has provided a vehicle speed survey for my consideration. However, the relevance of the prior approval requirements under paragraph Q.2(1) upon the outcome of the appeal, including transport and highway impacts and any associated evidence, is dependent upon firstly a determination as to whether the proposal in the submitted plans would be permitted development under Class Q.

Main Issues

6. The main issues are:
 - whether the proposal would be permitted development, with particular regard to whether the requirements of Schedule 2, Part 3, Class Q(b) in terms of paragraphs Q.1(i) and Q.1(g) 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 with particular regard to whether the transport and highway impacts of the development would be acceptable.

Reasons

Whether the proposal would be permitted development

7. The appeal site is within an agricultural holding located off and accessed from an existing track which leads from Stockley Lane (also known as C95). The building is located at a lower level than the adjacent section of Stockley Lane that rises towards the west.
8. At the time of my visit, the building subject to this appeal was in use for storage of hay and agricultural implements, together with accommodation for livestock. The main structure of the existing building consists of a steel portal frame with 6 bays that has a breeze block infill retaining wall to its lower section, together with a concrete slab base. The roof structure has bracing at both ends of the building and the existing roof sheeting is supported by rafters and 2 purlins on each slope. Vertical timber boards are mounted on rails attached to the main frame to provide weatherproofing above and beyond the retaining walls and below the roof. The existing building has a main opening on the east elevation and a smaller opening on the northern elevation. At the time of my visit, the building included an internal sub frame mounted to the main frame which was in use for agricultural storage purposes.
9. The PPG³ states that the permitted development right under Schedule 2, Part 3, Class Q assumes that the agricultural building is capable of functioning

³ What are permitted development rights?, Paragraph: 105 Reference ID: 13-105-20150305 (Revision date 05 03 2015)

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 for the residential use that the building would be considered to have the permitted development right.

10. The appellant has provided a structural report which was prepared by a qualified Civil and Structural Engineer. The report provides details of the geometry of the building, current roof and wind loads with assessment as loads per frame, together with revised roof loading and frame analysis relating to the conversion works that includes reference to a 'new internal steel frame'. Required repairs to the frame arose from misalignment due to overloading of straw bales on a mezzanine floor area. The report concludes that with appropriate repairs to the existing frame, the main structural form of the building is suitable for adaptation to domestic habitable accommodation.
11. The appellant has clarified in the evidence before me that no additional structural works would be undertaken following the installation of the internal sub frame mounted to the main frame which I observed formed part of completed repairs to the uprights damaged by the previous mezzanine hay floor. I am satisfied that the works undertaken to support the existing use of the building for agricultural purposes would have fallen under section 55(2)(a) of the Town and Country Planning Act 1990 which indicates that operations involving the maintenance, improvement or other alteration of any building and which affect only the interior of the building should not be taken to involve development of land.
12. The structural report provides only sectional drawings when identifying the position of an internal sub frame assessed as part of its calculations and which inform its conclusions. Nevertheless, it was evident at the time of my visit, that any previous structural issues affecting the building that had arisen from the damage associated to the previous mezzanine floor had been resolved by repairs that have taken place including to the sub frame. The appellant has confirmed that no further structural alterations are proposed.
13. Turning to the proposal in the submitted plans, the original steel frame and blockwork walls would be retained, with the profiled metal sheeting to the roof and timber boarding to the upper sections of the external walls replaced. Furthermore, windows and / or doors to each elevation, roof lights and solar PV panels would be added. To my mind, the installation of windows and alterations to the roof and exterior walls as proposed could comply with paragraph Q.1(i). The replacement of the upper sections of the walls and roof are reasonably necessary for a residential conversion to provide appropriate weatherproofing and reflect that the existing roof design would be unsuitable due to ventilation at the apex. Furthermore, the cumulative works would not constitute rebuilding so as to fall beyond the scope of a conversion permitted under Class Q when having regard to the recent High Court judgement in the *Hibbitt* case⁴.

⁴ *Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin)

14. Notwithstanding the above, a submitted plan (14055/P/125H) shows the addition of sliding timber doors on the south elevation mounted on the exterior of the existing building. In this way, although there would be little resultant floor space increase, the external dimensions of the existing building would be extended at that particular point as part of the development in conflict with the stipulation in paragraph Q.1(g). Although, the appellant has stated that the alterations proposed would not exceed the dimensions of the existing building, such a view is not consistent with the submitted plans before me. Furthermore, whilst the addition of doors may be reasonably necessary for the building to function as a dwelling house in terms of paragraph Q.1(i), such matters do not overcome the conflict relating to paragraph Q.1(g). Based on the evidence before me, the proposal would not comply with paragraph Q.1(g) so as to be permitted development under Class Q.
15. The Council also expressed concern with respect to the increased thickness of the walls and roof required to facilitate the conversion, including provision of windows, rooflights and solar PV panels. However as part of the appeal, the appellant has provided a cross sectional drawing which identifies that the increased width of the walls and roof would be accommodated within the external dimensions of the existing building to accord with paragraph Q.1(g). In this respect, I am satisfied that the solar PV panels indicated on the submitted plans could be provided as an integrated roof covering and that the rooflights could be assimilated into the other parts of the roof.
16. When solar PV panels are installed there is generally a need for an upgrade or the provision of a secondary structure to provide additional support for the resultant loading. The submitted plans do not indicate the addition of a further supporting structure beyond the repairs to the building which have taken place. However, the structural calculations provided indicate that the existing structure of the building and its purlin design could accommodate the loading from a roof with a PV system. Furthermore, the evidence provided by the appellant suggests that the internal works as part of the conversion that fall within section 55(2)(a) of the Town and Country Planning Act 1990 would not consist of structural elements intended to support the existing frame. Consequently, based on the evidence before me, the existing building would be structurally strong enough to take the loading that comes with the proposed external works to provide for its residential use. Nevertheless, the absence of conflict with Class Q in that respect is not decisive on the outcome of the appeal where conflict with paragraph Q.1 (g) has previously been identified.
17. In addition to the works proposed to the building, a new access position onto Stockley Lane is also proposed as indicated on the submitted plan (14055/P/126E). Schedule 2, Part 2, Class B of the GPDO relates specifically to means of access to a highway and permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in Schedule 2 (other than Part 1, Class A). However, Stockley Lane is a classified road that links between the A690 and B6299. Consequently, the engineering operations required to provide an extended driveway through the field and a new access to the highway some distance from the curtilage of the building would not be permitted development under Schedule 2, Part 2, Class B or Schedule 2, Part 3, Class Q of the GPDO and would need to be subject to a planning application.

18. In reaching my findings, I have taken account of an appeal decision⁵ that the appellant has brought to my attention. However, the decision was made prior to Schedule 2, Part 3, Class Q of the GPDO, the publication of the relevant PPG guidance, the recent High Court judgement in the Hibbitt case and the associated appeal decision⁶. Furthermore, the individual circumstances of each proposal are different. Consequently, I give little weight to the conclusions that the previous Inspector reached in 2014. I also afford little weight to a more recent Council decision to grant prior approval for change of use of an agricultural building to a dwelling at Lake View, Brancepeth Manor Farm⁷ as the full details of that scheme are not before me. This appeal is necessarily determined on its own merits relative to the legal tests in the GPDO.
19. I conclude that, based on the evidence before me, the proposed change of use would not satisfy the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, having regard to the associated guidance within the PPG, and therefore is not development permitted by it.

Prior Approval Matters

20. Given my conclusion that the proposal would not be development permitted under Schedule 2, Part 3, Class Q of the GPDO, there is no need for me to consider the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

21. 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 under the prior approval provisions set out previously.
22. The appeal is, therefore, dismissed.

Gareth Wildgoose

INSPECTOR

⁵ APP/N1215/A/14/2225593 - Allowed - 22 December 2014

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

⁷ Council ref: DM/15/03899/PNC – Approved subject to conditions - 9 February 2016