
Appeal Decision

Site visit made on 14 March 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 30 March 2017

Appeal Ref: APP/E2001/W/17/3166389

Rose Farm, Main Road, Harlthorpe, Selby YO8 6DW

- 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 Mrs L McKenzie-James against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/16/03736/AGRNOT, dated 3 November 2016, was refused by notice dated 22 December 2016.
 - The development proposed is to create a dwelling within part of the existing agricultural building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 3, 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. 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 firstly whether the proposal falls within the permitted development rights. An assessment relative to prior approval requirements under paragraph Q.2(1) is only necessary if it is firstly determined that the proposal would be permitted development under Class Q.
3. It is common ground between the main parties that the current proposal meets the requirements of Schedule 2, Part 3, Class Q, paragraphs Q.1(b)- (h) and (j) - (m) of the GPDO. Based on the evidence before me, together with my observations of the building and its surroundings, I have no reason to take a different view in terms of those Class Q requirements. However, the Council refused the application for prior approval because it considered that the proposal would not accord with Class Q(b) by reason of consisting of building alterations other than those permitted under paragraph Q.1(i). Furthermore, as the proposal relates to only part of an existing building, it is necessary that compliance with paragraph Q.1(a) is also assessed.

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

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

Main Issues

4. 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(a) and Q(b) in terms of paragraphs Q.1(a) and (i) of the GPDO would be met, and;
- If so, whether or not prior approval would be required in accordance with the conditions set out in paragraph Q.2(1) of the GPDO.

Reasons

Whether the proposal would be permitted development

5. Rose Farm consists of two large buildings within a yard area, together with other agricultural land in a rural setting. The appeal site identified in the submitted plans consists of the eastern part of the existing building closest to the road and an associated adjoining curtilage denoted by a red line in the submitted plans. The extent of the proposed dwelling within the building would be around a third of its total footprint.
6. A building for the purposes of Schedule 2, Part 3, Class Q of the GPDO is defined as, including any structure or erection, and includes any part of a building³. Based upon the evidence before me and my observation of the building, I am satisfied that it was solely in agricultural use as part of an established agricultural unit on the 20th March 2013 and has been thereafter up to the present day. In this regard, at the time of my visit, existing office accommodation and other temporary structures within other parts of the building appeared to be ancillary to the agricultural use at Rose Farm. The proposal, therefore, accords with paragraph Q.1(a) of the GPDO.
7. 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 for the residential use that the building would be considered to have the permitted development right.
8. The building has a substantial portal frame structure consisting of steel uprights supported by blockwork walls to its lower section and metal sheeting above which is also attached to horizontal timber beams. The steel uprights span to a ridge beam with a number of purlins to each slope that support a fibre cement sheet roof with some transparent panels. There are additional diagonal supports in the bay which adjoins the eastern elevation. The building has an existing concrete floor slab and the part of the building subject to this appeal is not currently subdivided from the remainder of the building.

³ Article 2 (1) of the GPDO

⁴ When is permission required?, Paragraph: 105 Reference ID: 13-105-20150305 (Revision date 05 03 2015)

9. A structural report has not been provided and no substantiated evidence has been offered by the main parties in terms of the structural condition of the building. Based upon my observations, the existing building is in a good state of repair and is structurally sound for agricultural use with water, electricity and drainage services. Nevertheless, in its present condition, the part of the building subject to this appeal would be incapable of functioning as a dwelling without the works indicated in the submitted plans. The works include the potential replacement of roof coverings and external sheet cladding, addition of windows and doors, together with a new internal wall to subdivide the dwelling from the remainder of the building.
10. The installation and replacement of exterior walls, roofs, doors and windows would fall within building operations reasonably necessary for the building to function as a dwellinghouse. In this respect, I observed that windows and doors in other parts of the building have been incorporated into the existing walls and coverings without the evident need for structural enhancements. However, the proposal identified in the submitted plans also includes the installation of aluminium framed roof windows rather than clear panels as referred to elsewhere in the appellant's evidence. It is reasonable that aluminium framed roof windows would consist of more substantial materials to accord with Building Regulations than the existing lightweight roof covering and are, therefore, external works which would result in additional loading. To my mind, the scale of the larger roof light in particular could require some reconfiguration of existing structural elements such as purlins and/or additional support for the resultant loading in a bay where diagonal supports are not present. No structural calculations have been provided to indicate that the existing roof structure and floor of the building could accommodate the additional loading associated with those external works.
11. Having regard to the above, based on the evidence before me, I cannot conclude that the existing building would be structurally strong enough to take the loading which comes with the external works to provide for its change to residential use, or that such works would not require new structural elements. Consequently, in the particular circumstances of this case, it has not been demonstrated that the building could be converted in accordance with Class Q(b) of the GPDO without significant new building operations beyond those specified at paragraph Q.1(i).
12. It is also unclear from the evidence before me whether the new subdividing wall within the building would in itself consist of a structural element. A sample panel constructed and attached to the existing building at the time of my visit appeared to incorporate a metal sub-frame. Having regard to the recent High Court judgement in the *Hibbitt* case⁵, a development that includes new structural elements of that nature could be considered to involve rebuilding or a fresh build to an extent that it would not be a conversion for the purposes of Class Q.
13. I note the appellant's suggestion that some internal works do not need to be covered by the permitted development right, with reference to s55 (2)(a) of the Town and Country Planning Act 1990 (TCPA). This states that "*the carrying out for the maintenance improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially*

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

affect the external appearance of the building” does not constitute development. Consequently, works falling within s55 (2)(a) of the TCPA do not constitute development and so do not need to be covered by the permitted development rights granted by Class Q of the GPDO. This definition could include works that would facilitate the layout of some internal rooms and first floor pods as indicated on the submitted plans.

14. Notwithstanding the above, s55(2)(a) of the TCPA only applies to works of *"maintenance, improvement or other alteration of any building"*. The appellant has asserted that internal walls could be constructed now without the need for planning permission if used for ancillary agricultural purposes. However, those works have not taken place and the determination of this appeal relates to a proposed conversion under Class Q of the GPDO in terms of works reasonably necessary to convert the existing building. Consequently, there is a difference between works that affect only the interior of the building falling under s55(2)(a) of the TCPA, compared to structural alterations that are development undertaken internally as part of a material change of use of a building and / or to support works which materially affect the external appearance of the building. Based on the evidence before me, the proposed internal wall to subdivide the dwelling from the agricultural use as part of a change of use to a dwelling could fall within the latter category and therefore, would be a building operation which constitutes development and necessitates consideration relative to Class Q of the GPDO.
15. Schedule 2, Part 3, Paragraph W(3) of the GPDO makes it clear that the onus is on the developer to provide sufficient information to establish whether the proposed development complies with any conditions, limitations or restrictions of Class Q. Although the appellant asserts that there will be no new structural work as a consequence of the proposed development, I find the evidence before me is not sufficient to reach such a conclusion for the reasons previously stated.
16. I conclude that the proposed change of use has not provided sufficient information to establish that it would satisfy the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 in terms of Class Q(b) and paragraph Q.1(i), having regard to the associated guidance within the PPG, and therefore is not development permitted by it.

Prior Approval Matters

17. Given my conclusion that the evidence before me does not establish that the proposed change of use would 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

18. For the reasons given and based upon the evidence before me, I conclude that it has not been demonstrated that the proposal is permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is, therefore, dismissed.

Gareth Wildgoose

INSPECTOR