

Appeal Decision

Site visit made on 18 April 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 17th May 2017

Appeal Ref: APP/P1045/W/17/3168589

Winson Farm, Blind Lane, Kirk Ireton, Ashbourne DE6 3JZ

- 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 Steven Walker against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00738/PDA, dated 27 August 2016, was refused by notice dated 22 November 2016.
 - The development proposed is a change of use of an agricultural building to a use as two dwellinghouses in accordance with class c3 (dwellinghouses) of the schedule use classes order.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. In the interests of clarity and for the avoidance of doubt, I have used the description of development as provided in the appellant's appeal form in the header above.

Main Issue

3. The main issue is whether the proposal is permitted development under Schedule 2, Part 3, Class Q(b) of the General Permitted Development Order (GPDO) 2015, having particular regard to whether the building operations proposed are reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouse).

Reasons

4. The appeal relates to a steel framed agricultural building, which was being used primarily to house cattle at the time of my visit. The building is open fronted, with three sides being made up of a concrete panel plinth with either timber or corrugated metal cladding above. It has a corrugated metal roof and concrete floor.
 5. The works proposed would include the replacement of the existing concrete panels and cladding with new timber clad walls and insulation, the creation of a new similarly clad wall in the currently open elevation, the installation of doors and windows within the new walls and the replacement of the roof. Internally, there would be new dividing walls and the creation of a new first floor level.
-

6. Class Q(b) of the GPDO refers to building operations that are 'reasonably necessary' to convert the building being considered permitted development. The GPDO does not define what is meant by 'reasonably necessary'. However, both parties have referred me to the recent *Hibbitt*¹ court judgement, which provides important guidance as to how this element of the GPDO should be interpreted.
7. I accept the argument that the building does not have to be capable of functioning as a dwelling in its existing state in order to benefit from permitted development rights. Equally, Class Q allows for works that could be extensive in nature and includes provision for the installation and replacement of walls, windows, doors, roofs and for partial demolition. However, in the above judgment the Court held that in order for the permitted development right to apply, the development proposed must fall within the concept of a 'conversion' as opposed to a 'rebuild' or 'fresh build'. If it does not, then it fails at the first hurdle and does not constitute permitted development. Whether or not the proposed works go beyond the scope of conversion is a matter of fact and degree.
8. The National Planning Practice Guidance (PPG) makes it clear that it is not the intention of the permitted development right to include the construction of new structural elements. It further states that the permitted development right only applies where the existing building is structurally strong enough to take the loading which comes with any permitted external works. Reference is made in the evidence to the results of a structural survey which concludes the steel frame would be capable of accommodating the increased load.
9. While the appellant states there would be no structural changes to the building, reference is made in the officer report to the need for additional bracing to limit the flexing of the frame when under load. I have also noted reference on the submitted plans to changes to the internal layout to accommodate 'future steel supports'. The evidence before me is not therefore entirely clear with regard to the extent of structural works to the building as a result of the other extensive works and alterations proposed.
10. Nevertheless, in the appeal related to the *Hibbitt* case, the Inspector concluded the remaining framework would be structurally sound enough to accept the proposed works, but that this was not determinative in terms of whether the works involved were within the scope of Class Q. The judge accepted this and concluded that the development in that case was, in all practical terms, starting afresh with only a modest amount of help from the original structure. This ruling demonstrates that the lack of structural change is not necessarily determinative in considering whether the limitations of Class Q are met.
11. The works here would involve the complete replacement of three walls, the construction of a new fourth wall on the currently open elevation, a new roof with skylights, internal dividing walls and the formation of a new first floor level. This would involve significant amounts of new construction to all four elevations and the roof. I accept that substantial works could fall under the scope of building operations within Class Q.

¹ *Hibbitt and another v Secretary of State for Communities and Local Government and another* [2016] EWHC 2853 (Admin)

12. However, in the proposal before me, the structure would only be capable of functioning as a dwelling following substantial replacement and construction of new elements. This constitutes a significant level of alteration. The existing building would be stripped down to the frame only. In my view, if comparing what would remain of the original building with what would be constructed, it would be reasonable to conclude that the works carried out would, as a matter of fact and degree, be more than conversion. As such, I consider the nature and extent of the works to be such that the development would amount to a 'fresh build' as set out in *Hibbitt*.
13. Taking all relevant factors into account, it is my view that the extent of the works proposed for the building to be used as a dwelling would fall outside the scope permitted under Class Q(b) and would thus not be permitted development.

Other matters

14. The appellant has indicated that the dwellings created would be occupied by members of their family who would continue to farm the land. However, this does not have a bearing on whether the development would meet the specific conditions of the GPDO and thus is not something to which I have given weight in this case.
15. The Council assessed the proposal against the prior approval criteria set out in Class Q.2(1). Whilst they did not raise any significant concerns in relation to these matters, this provision relates only to permitted development. As I have already found that the development would not meet the requirements of Class Q(b), it is not permitted development and thus it is not necessary to consider these matters further.

Conclusion

16. For the reasons outlined above, the development does not satisfy the limitations in Part 3, Class Q of the GPDO. As such, I consider that the appeal should be dismissed.

S J Lee

INSPECTOR