
Appeal Decision

Hearing held on 24 May 2017

Site visit made on 24 May 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 31 May 2017

Appeal Ref: APP/D0840/X/16/3149088

Buildings at Merbein Farm, Tregurrian Hill, Tregurrian, Newquay TR8 4AD

- 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 B Fullerton against the decision of Cornwall Council.
- The application Ref PA15/11600, dated 11 December 2015, was refused by notice dated 10 February 2016.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as "change of use of two agricultural buildings to dwellings and associated operational development as allowed under Class Q of the GPDO 2015".

Summary of Decision: The appeal is dismissed.

Procedural matters and background

1. Class Q of Part 3 of Schedule 2 of the GPDO¹ says that development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a dwelling house and any building operations necessary to convert the building is permitted development. The deemed permission is subject to satisfying the criteria in paragraph Q1.(a)-(m), the pre-commencement conditions, Q.2. (1) and (2) and commencing the development within 3 years.
2. An application for a Lawful Development Certificate (LDC) is determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. The onus of proof lies firmly on the appellant and to succeed the evidence submitted must be sufficiently precise and unambiguous.
3. Two previous applications have been made in respect of the subject buildings in 2014 and 2015. These applications were for Prior Approval of proposed works to the subject buildings. The first was refused on 25 November 2014² and the second was made on 29 June 2015 and subsequently refused by the Council on 1 September 2015³. It is common ground that the latter decision was made more than 56 days after the application was made.

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

² Council reference PA14/08493

³ Council reference PA15/06042

4. Notwithstanding the situation in respect of the latter application my jurisdiction is limited to the consideration of the appeal made against the refusal of the application made under Section 192 of the Act⁴.
5. The application concerns the proposed change of use and associated works in respect of two separate buildings on land at Merbein Farm. The characteristics of the two buildings are dissimilar and I consider them in turn in my decision. The buildings are described in the application documents as 'the Hay Barn'⁵ and the 'Tractor Store'. I have used these descriptions in my decision.
6. The Hay Barn is a structure supported by timber upright posts, which in turn carry roof beams and purlins. This structural frame is clad in corrugated sheeting to all four elevations and the roof. The structure is accessed by a wide opening on the side elevation and is partitioned into two spaces. The outer 'room' has an earth floor; the inner 'room' has pavements which appear to be laid onto an earth base.
7. The Tractor Store is constructed of dense blockwork masonry (cavity construction) with a damp proof membrane and is clad in timber above sill level. Internally the second skin of blocks is incomplete. The Store also has several windows, which have a residential character and include at least one double glazed unit. The concrete tiled roof is supported by A-framed rafters. The floor is of concrete, and is covered with large composite timber sheets. Heating is provided by a log burning stove.

Main Issue

8. The main issue in this appeal is whether the proposed development is permitted by Class Q of Part 3 of Schedule 2 of the GPDO.

Hay Barn

9. It is common ground between the parties that the proposed works fall within the following criterion or limitations in Class Q.1.: (a), (b), (c), (d), (e), (f), (h), (j), (k), (l) and (m). From the evidence before me I see no reason to disagree. Thus, in terms of the proposed works to the Hay Barn, the remaining limitations concern:

(g) whether or not "the development would result in the external dimensions of the Hay Barn extending beyond the external dimensions of the existing building at any given point;" and

(i) "the development under Class Q(b) 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

⁴ Town and Country Planning Act 1990

⁵ Also described as the Hay Store

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i)".

Class Q.1.(g): Hay Barn

10. The appellant said that it is self-evident that the proposed works concern the use and conversion of the Hay Barn and that no alterations to its size, form and dimensions are proposed. This is supported by the submitted structural report which appears to indicate that the existing structural timberwork would be retained.
11. However, agreed measurements taken on site during the Hearing differ from the submitted plans: SK01 (proposed floor plans and elevations) and the block plan. These suggest that the building would not remain the same size. The appellant conceded the discrepancy but said that an LDC could be granted subject to a condition that tied any proposals to the existing dimensions of the Hay Barn. I have considered this suggestion very carefully but in these circumstances I do not consider that such a condition would be appropriate. This is because, firstly, in the absence of any survey plan of the Hay Barn there is no existing document which could act as a datum point in a condition. Secondly, plan SK01 is itself unreliable because the elevations do not match the proposed floor plans. In this case such a condition would not meet the tests set out in the National Planning Policy Framework (the Framework)⁶ because it could not be precise. Nor do I accept that the submitted plans can simply be disregarded as unnecessary. These are part of the documentation submitted to support the application (and appeal) and have not been formally withdrawn or amended.

Class Q.1. (i): Hay Barn

12. Mr Fullerton said that he was in the construction trade and that he would be undertaking the proposed works. For this reason he was able to say that he would keep all the existing fabric of the Hay Barn in the proposed dwelling. The retained fabric would include all the corrugated cladding on the four elevations and the roof. He also said that the internal divisions would be insulated with hay bales and thus would be lightweight. Consequently, because the corrugated sheeting would remain, no strip foundations would be required. Thus the proposed work would not include any requirement for additional structural support.
13. From what I saw the corrugated cladding is in poor condition and is rusting so that holes have now formed within the sheeting. I also observed that although the main roof timbers appear sound, the structure seems to rely on a somewhat haphazard arrangement of linking timbers. The oral evidence of the description of the scheme proposed is inconsistent with that anticipated in the appellant's structural engineer's report. This seems to indicate that the current structure, other than the main structural timbers, would be replaced. This report also says that in order to conform to the requirements of Building Regulations perimeter strip foundations would generally be required⁷. In the absence of a schedule of building work the need, or otherwise, for additional structural support is unclear.

⁶ National Planning Policy Framework Paragraph 206

⁷ Although the report also said that alternative construction methods could be used.

14. Class Q.1.(i) says that walls, doors, roofs or exterior walls can be installed or replaced and thus I found that the appellant's suggestion that all the existing fabric would be retained surprising at best. In these circumstances I favour the evidence in the structural report, which has been compiled by a chartered engineer.
15. The Council witness said that the Hay Barn would be stripped to a skeletal state. This, he says is confirmed by the structural engineer's report. Thus relying on *Hibbitt and Another and SCLG* [2016] EWHC 2853 (Admin) (*Hibbitt*) the works required would be far in excess of those which could be described as a conversion as permitted by Class Q. Accordingly he said that the works amount to a rebuild.
16. Taking all these points together, and in particular placing reliance on the structural engineer's report, I find the appellant's suggestion that the existing structure would be retained intact unconvincing. Thus I find, on the balance of probability and in the light of *Hibbert*, that the works to facilitate the creation of a residential unit would be so extensive that they would go beyond what could be described as a conversion of an existing agricultural building. This conclusion is reinforced by the possibility that the dimensions of the building would be altered which in turn could have a significant effect on the structural support for the Hay Barn.
17. Consequently, for the reasons I have given the proposed residential use of the Hay Barn would not be permitted development because it would not satisfy the requirements of Class Q.1.(i) of Part 3 of the GPDO. Therefore the proposed development does not benefit from deemed consent granted by the development order.

The Tractor Store

18. It is common ground between the parties that the Tractor Store is substantially built and that conversion of the building to residential use is practicable. Indeed the appellant's architect describes the Tractor Store as "already more of a residential style property than a traditional barn". Notwithstanding this the Council says that additional structural support may be required in any such conversion. It also says that work has commenced on the conversion work. I shall consider these arguments in turn.

Class Q.1.(i): Tractor Store

19. The Council's witness said that the internal cavity wall is incomplete and the structural engineer has provided no evidence that strip foundations have been constructed. In these circumstances it is unclear if the foundations would need to be upgraded as part of the proposed conversion.
20. I find the structural engineer's report inconsistent with what was visible at the site visit. The report appears to imply that the interior leaf of blocks is complete and this was reiterated by the appellant at the Hearing⁸. But from what I saw the inner cavity wall is incomplete, as is described by the Council. In these circumstances I give less weight to the appellant's evidence because it is not reliable.

⁸ Mr Fullerton gave conflicting evidence about the walls during the Hearing and later said that the interior cavity wall was indeed incomplete.

21. Notwithstanding this the building appears to be solidly constructed with no cracks or visible defects and on the balance of probabilities the loading on the structure would not increase due to the proposed conversion works. In these circumstances the conversion would not conflict with limitation Class Q.1.(i)

Commencement: Tractor Store

22. The appellant said that the Tractor Store had been constructed in about 1998-2000 and that no building work had taken place on the building since that date. The building has the benefit of a retrospective planning permission granted by the Council in 2000. The approved plans showed single skin walls up to about a metre in height and corrugated cladding for the remainder of the walls and the roof.
23. It is common ground that the materials used in the development are not in accordance with the approved plans although the siting and dimensions appear to accord with what is currently on site. There is no independent evidence of when the cavity wall was (partially) completed, although I saw that the pile of blocks adjacent to the building show little signs of weathering. It seems to me probable that over a 17 year period there would be some evidence of moss or other vegetative growth. However although the evidence before me is contradictory, on the balance of probability, I cannot conclude that the building work is recent and therefore whether the proposed conversion has commenced is not determinative in this appeal.

Class Q.1.(a) Agricultural Use: Tractor Store

24. Class Q.1(a) says that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit, at the relevant date. For the purposes of Class Q "the site" means the subject building and any land within its curtilage. The appellant says the building was approved as a tractor store and thus this is its lawful use and consequently he says it is in agricultural use.
25. As I have noted above the appellant says that no building work has been undertaken at the Tractor Store since about 2000. Thus, because I have no counter evidence before me, I conclude that the physical characteristics of the building are unchanged. This in turn means that what I saw at the site visit is, on the balance of probability, unaltered since 20 March 2013 (the relevant date); this finding appears to be supported by photographs and a supporting statement dated August 2014 submitted as part of the Prior Approval application.
26. As noted above the Tractor Store, as described by the appellant's architect looks like a 'residential style property'. It has cavity walls, a damp proof membrane, domestic windows including double glazing, a concrete floor beneath what appears to be a composite timber floor and a substantial wood burning stove. As well as the garaging of a tractor it is also used for domestic storage and accommodates what seems to be a full size pool table.
27. Mr Fullerton said in his oral evidence that the Tractor Store was sometimes used to store machinery used by a neighbouring farmer. But this evidence is inconsistent with the supporting letter which states in terms that the farmer used land owned by the appellant to graze sheep and that he stored hay bales in the 'shed'. From the evidence at the Hearing it is clear that the 'shed'

means the Hay Barn not the Tractor Store. Indeed at the time of my visit only the Hay Barn was used for storing hay. Thus the sole evidence of 'agricultural use' is the storage or garaging of a tractor.

28. Given the residential character of the Tractor Store, and the absence of evidence⁹ that the tractor is actually in use¹⁰ it seems to me that, on the balance of probabilities, the Tractor Store is not and was not in agricultural use as part of an agricultural trade or business at the date of the application or on the relevant date for the purposes of Class Q. At best the tractor is simply stored, much as one might store or garage a cherished car. Storage of a vehicle, albeit of a rural character, does not in itself amount to evidence of agricultural use associated with the surrounding land.
29. Even if I am wrong in this, the building is also in use for domestic storage and probably for leisure use. Thus, as a matter of fact and degree, and on the balance of probabilities, the Tractor Store was not used solely for an agricultural use as part of an established agricultural unit at the relevant date.
30. In these circumstances, and for the reasons I have given the proposed conversion of the Tractor Shed is not permitted by reason of limitation in Class Q.1.(a).

Conclusion and formal decision

31. I have taken into account the appeal decisions¹¹ relied upon by the appellant, but do not find these comparable to the appeal before me. The Stoke on Trent decision concerned a Prior Approval application and issues of curtilage and protected species. The Launceston decision relates to a building in what is described as excellent order and appears to have been supported by a detailed schedule of works. Neither appeal has similar circumstances to that before me. Moreover it is an established principle that an appeal must turn on its own facts and thus these appeal decisions do not alter my conclusions in this appeal.
32. 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 residential conversion of the Tractor Store and the Hay Barn was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision. Consequently the appeal is dismissed.

Sukie Tamplin

INSPECTOR

⁹ Mr Fullerton said it was used for 'tilling the field' but the written evidence says that his agricultural activity is limited to poultry and bee keeping and the land is used as grazing for sheep. He did not explain how tilling is involved in any of these activities.

¹⁰ There was no evidence of mud on the tyres or deposited on the floor at the time of my visit or visible in the 2014 photographs submitted by the appellant.

¹¹ Appeal decisions APP/D0840/W/16/3143012 (Launceston) & APP/B3438/A/14/2225913 (Stoke on Trent)

APPEARANCES

FOR THE APPELLANT:

Mr Billy Fullerton	Appellant in person
James Whilding	Director, Acorus Rural Property Services
Stephen Evans	Coodes LLP Solicitors

FOR THE LOCAL PLANNING AUTHORITY:

Jim Lee	Appeals Officer, Cornwall County Council
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DOCUMENTS received at the Hearing

- 1 Statement of Common Ground
- 2 *Hibbitt and Another v SCLG* [2016] EWHC 2853 (Admin)
submitted by the Council*
- 3 Full size scale plan (as proposed) Dwg No. SK 01
- 4 Appeal decision APP/G5180/X/16/3151746 submitted by the Council*
- 5 Appeal decision APP/D0840/W/16/3143012 submitted by the appellant
- 6 Appeal decision APP/B3438/A/14/2225913 submitted by the appellant

*Submitted previously but not cross copied