

## Appeal Decision

Hearing held on 9 May, 2017

Site visit made on 9 May, 2017

**by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA**

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

**Decision date: 23<sup>rd</sup> June, 2017**

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### **Appeal Ref: APP/D3125/W/16/3165570 Windmill Barn, Main Street, Clanfield, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 (as amended) (GPDO).
  - The appeal is made by Mr Phil Kinch against the decision of West Oxfordshire District Council.
  - The application Ref: 16/02486/PN56 dated 19 July, 2016 was refused by notice dated 13 September, 2016.
  - The development proposed is conversion of an agricultural barn into a single dwelling house.
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### **Decision**

1. The appeal is dismissed.

### **Background**

2. The change of use of an agricultural building and any land within its curtilage to residential use is permitted by Q(a) of Schedule 2, of Part 3 of the GPDO. Development consisting of building operations reasonably necessary to convert an agricultural building to a dwelling house is permitted under Q(b) of Schedule 2, Part 3 of the GPDO. It is clarified at Q.1.(i) that these works are restricted to the installation or replacement of windows, doors, roofs or exterior walls and services, to the extent reasonably necessary for the building to function as a dwelling/house.

### **Main Issues**

3. The main issues are:-
  - i. whether the extent of the building operations required are reasonably necessary to convert the building; and
  - ii. whether the location or siting of the building makes it otherwise impractical and undesirable for the building to change from agricultural use to a dwellinghouse.

### **Reasons**

4. Windmill Barn is located to the south of the main settlement of Clanfield, a short distance along an unmade track leading from Main Street. It is a six-bay
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barn consisting of corrugated fibre cement supported on a slender steel frame of stanchions and rafters. It is open on four sides and has a compacted earth floor. It is not disputed by the parties that it is currently in agricultural use.

*Extent of the building operations required*

5. The Planning Practice Guidance (PPG) is clear at paragraph 105 that it is not the intention of the permitted development right to include the construction of new structural elements for the building.
6. The conversion of the barn to residential use would include the installation of four walls, including doors and windows; replacement roof cladding with repair or supplementing of roof purlins as necessary; a new concrete floor incorporating damp proofing; and various internal elements including stud walling, suspended ceilings and a first floor. The external cladding would be carried on a timber frame bolted between the steel stanchions, and would sit on a brick or blockwork plinth, although it appears unlikely that that this would not have some form of foundation.
7. The appellant has provided a structural report which concludes that the steel frame would be capable of supporting the new external cladding and new roof, and a first floor supported on internal steel joists bolted between the external stanchions. I am not, as a result, convinced by the Council's argument that the first floor structure or the new concrete floor, which would be independent of the existing concrete foundation pads of the steel frame, would be new structural elements which would conflict with the PPG.
8. However, although, it appears to me that certain of the new elements, particularly the external cladding and new internal walls, are primarily intended to create a desired amount and quality of accommodation, I note from the structural report that they would have incidental structural benefits through stiffening the existing structural frame. Furthermore, notwithstanding its overall conclusion, it is stated in the structural report that the new external walls would play some role in supporting the rafters as the existing eaves beams would not have sufficient strength to span between the stanchions with any additional weight. Although this might be counteracted by retention of the existing roof covering or its replacement with a lighter cladding, it appears to me that the proposed works come very close to the introduction of new elements performing a structural role.
9. Notwithstanding this, however, it is necessary to examine whether the building operations proposed go beyond what is necessary to convert the building to residential use, and whether or not, therefore, it enjoys the permitted development for change of use granted in Class Q. It is the contention of the appellant that the retention of the building's frame means that the works are tantamount to conversion, rather than new building, and that it does not therefore go beyond what is reasonably necessary.
10. My attention has been drawn to the High Court Judgement in *Hibbitt vs the Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin) (*Hibbitt*) which concluded that an Inspector was correct in her analysis that that the works needed for the conversion to a dwelling of a steel framed barn, which was roofed and open on three sides, went a very long way beyond what might sensibly or reasonably be described as a conversion. The findings of paragraph 27 are particularly

relevant to this appeal, in stating that the development was “in all practical senses starting afresh, with only a modest amount of help from the original agricultural building” and also that there will be numerous instances where the starting point, the agricultural building, might be so skeletal and minimalist that the works needed to alter it to a dwelling would be of such a magnitude that in practical reality what is being undertaken is a rebuild.

11. I note the similarities with the appeal building in this case, which has a low pitched roof with small gable ends, supported on slender steel struts, and has no sides. I consider that it too could reasonably be considered to be minimalist and skeletal. While no individual parts of the works proposed are contrary to the provisions of Class Q of the GPDO, they would together make comprehensive additions to the existing structure in order to comprise a functional dwelling, with very limited contribution from the existing frame.
12. Their cumulative total would, therefore, go beyond what could be considered to be reasonably necessary for conversion of the building, and would amount to a rebuild or fresh build in the terms of the above judgement, rather than a conversion. As a result they would fail to comply with the limitations and restrictions specified in Class Q and would not therefore comprise permitted development.
13. I have considered the appellant’s point that the approach set out in Hibbitt would risk making Q.1 of the GPDO inoperable, but as there are likely to be many cases which do not involve such extensive building works, I conclude that this is not likely. Furthermore, Mr Justice Green, in paragraphs 29 and 30 of the Hibbitt judgement, identified that Class Q has the effect of defining the clear cut cases of genuine conversions where permission is automatically granted, while more marginal cases are left to the ordinary planning system and consideration in the light of Paragraph 55 of the National Planning Policy Framework.
14. The appellant has placed a number of appeal decisions before me. In one case, at Rowhook, where conversion under Class Q was allowed<sup>1</sup>, the Council had accepted that the works required to convert the building were reasonably necessary, the considerations appeared to be primarily relating to structural concerns, and the decision, in any case, pre-dates the Hibbitt judgement. A further decision, at Inkberrow,<sup>2</sup> relates to what appears to be a more robust existing agricultural building, and also pre-dates the Hibbitt judgement.
15. In regard to the refusal at Brookside Farm<sup>3</sup>, while I acknowledge the difference of opinion of the appellant in relation to the conclusions of the inspector, this decision follows the approach identified in the Hibbitt judgement.
16. A more recent decision at Yealand Conyers allowed the conversion of an agricultural building to residential use under Class Q<sup>4</sup>, and the inspector in this case considered that the internal works which had been already carried out were not development for the purposes of the Act, which appears to me to be a different issue from the extent of the external works.

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<sup>1</sup> APP/Z3825/W/16/3150211

<sup>2</sup> APP/H1840/W/15/3141212

<sup>3</sup> APP/Z3825/W/16/3152874

<sup>4</sup> APP/A2335/W/16/3160948

17. A further decision related to the change of use of a barn in Priddy from agricultural to commercial storage<sup>5</sup>, but while the Inspector in this case concluded that the proposed recladding would be a significant consolidation, the test in that case was a rather different, less restrictive one, set by Policy DP22 of the Local Plan, which allowed re-use and adaptation up to major or complete reconstruction. A further case, North End Place relating to the conversion of two barns to 3 no. live-work units, was also considered in relation to a similar test, where the relevant policy sought to avoid major reconstruction and to maintain the existing character and fabric. The considerations in these cases were therefore different from those in this case. These appeal cases do not as a result cause me to alter my conclusions.

*The location or siting of the building*

18. As I have concluded that the appeal proposal would not comprise permitted development, I am not required to reach a conclusion on this main issue, or on any other matters such as the curtilage and floorspace of the proposed dwelling.

**Conclusion**

19. For the reasons give above therefore, and taking into account matters raised, I conclude that the appeal should be dismissed.

*S J Buckingham*

INSPECTOR

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<sup>5</sup> APP/Q3305/W/16/3161115

**APPEARANCES**

FOR THE APPELLANT:

Phil Kinch

Appellant

Tony Kernon

Kernon Countryside Consultants Ltd.

FOR THE LOCAL PLANNING AUTHORITY

Liz Huggins

Senior Planning Officer, West Oxfordshire  
District Council

Chris Wood

Appeals Officer, West Oxfordshire District  
Council