
Appeal Decision

Site visit made on 8 May 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 6 July 2017

Appeal Ref: APP/J1860/W/16/3165296

Holywards Farm, Moseley Road, Hallow, Worcestershire WR2 6NL

- 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 D Corfield against the decision of Malvern Hills District Council.
 - The application ref 16/01242/PDU, dated 23 August 2016, was refused by notice dated 25 October 2016.
 - The development proposed is the 'conversion of building to form new dwelling'.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3 and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of building to form new dwelling at Holywards Farm, Moseley Road, Hallow, Worcestershire WR2 6NL in accordance with the details submitted pursuant to Article 3 and Schedule 2, Part 3, Paragraph Q.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, subject to the conditions described and set out below.

Procedural Matters

2. The appellant has made a separate appeal¹ against an enforcement notice issued by the Council in relation to an alleged failure to comply with condition no. 22 imposed on planning permission ref: 09/00901/FUL granted on 12 April 2010. The notice relates to a different building to that which is subject to this appeal. I am appointed to determine the other appeal, but have made separate decisions based only on the evidence that is relevant to each.

Main Issue

3. Under Article 3 and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), planning permission is granted for (a) the change of use of an agricultural building to a use as a dwelling house; and (b) building operations reasonably necessary to convert the building, subject to conditions and limitations. This appeal relates to a proposed development falling under Q(a) and Q(b).
4. Condition Q.2(1) is that, where development is proposed under Class Q(a) and Q(b), and before beginning the development, the developer must apply to the local planning authority as to whether their prior approval will be required in

¹ Appeal ref: APP/J1860/C/16/3162209

respect of specified matters. In this case, the Council does not object to the proposed development in relation to the prior approval matters, subject to the imposition of conditions as discussed below.

5. The Council refused the application on the basis that the proposed development would not comply with paragraph Q.1(a), which provides that development is not permitted by Class Q if the site was not solely used for an agricultural use as part of an established agricultural unit (i) on 20 March 2013, or (ii), in the case of a building in use before but not on that date, when last in use².
6. Under Part 3, paragraph W(3) of the GPDO, the local planning authority may refuse an application made under Q.2(1) where, in the opinion of the local planning authority, the proposed development does not comply with any conditions, limitations or restrictions specified in this Part as being applicable to the development. Thus, the main issue is whether the proposed development is permitted under Article 3 and Schedule 2, Part 3, Class Q of the GPDO, with regard to Q.1(a).

Reasons

7. On 12 April 2010, planning permission (ref: 09/00901/FUL) was granted for the conversion of existing barns to form two dwellings and new garage block at Holywards Farm. One of the barns subject to the '2010 permission' was the appeal building. There is no dispute that the permission was implemented to the extent that the other barn was altered so as to facilitate the permitted change of use, and that it is now used and occupied as a dwellinghouse.
8. The appeal building was also altered pursuant to the 2010 permission. In the supporting statement submitted with the prior approval application, the appellant stated that 'part of the building has been demolished' in accordance with the approved plans which showed that there would be some re-building. In the statement of case for this appeal, the appellant also noted that there have been 'very limited building works...which included the partial construction of some internal walls and the installation of a flue'.
9. The appellant argues that, although the other barn is now used as a dwelling and the appeal building is altered, its last use was for storage in relation to the dairy unit at Holywards Farm. The Council's case is that the implementation in part of the 2010 permission served to change the use of the appeal building to a dwelling, such that it was not used on 20 March 2013, or last used for agriculture as part of an established agricultural unit.
10. It could not be right, however, that the commencement of the 2010 permission would *automatically* mean there has been a change of use of the building. Whether there has been a material change of use is a matter of fact and degree. The starting point is normally the planning unit – not necessarily the same as the agricultural unit – and its past and present primary uses. When dating a change of use to a dwelling, it is necessary to consider when the building provided viable facilities for living and the residential use began.

² For the purposes of Part 3, paragraph X states that "agricultural building" means "a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of trade or business; and "agricultural use" refers to such uses"; "established agricultural unit" means "agricultural land occupied as a unit of agriculture on or before 20 March 2013".

11. My interpretation of the 2010 permission is that it enabled the creation of two new residential planning units, with each including a dwelling that is separate to the other and the farm. It also seems that the converted barn is now a self-contained residential property, which is likely to be at least functionally divorced from the appeal building and the agricultural unit³. The appeal site, as shown on plan no. 0728/BR/10, covers a smaller area than the 2010 permission.
12. It is plain from my description of the works undertaken that the appeal building does not provide viable facilities for living. It has not been used or occupied as a dwellinghouse. From the evidence before me, the part implementation of the 2010 permission has not served to cause a material change of use of the appeal building to a dwellinghouse. Adding weight to that view, I saw that the building is not physically divorced from the farm and works undertaken to the building, including the partial demolition, construction of internal walls and installation of the flue need not prevent its re-use for agricultural purposes.
13. The Council suggested that development is not permitted by Class Q if there was any prior change of use of the building, or abandonment of the agriculture use⁴. In its report on the application, the Council noted the appellant's admission that the building was used for 'occasional overflow storage' to enable the change of use of the adjacent barn. However, the Council did not refer to this matter again in its statement of case for the appeal. There is insufficient evidence of any change of use of the building, since its last use for agricultural purposes, such that I could find the development in conflict with Q.1(a)⁵.
14. The Council stated that the agricultural 'use must continue until the change of use is made under Class Q'. However, paragraph Q.1(a)(ii) does not set out any restriction as to the length of time between cessation of the agricultural use and the application for prior approval⁶. I also note that the Council has not made any case that – although it alluded to the term – the lawful agricultural use was abandoned in planning terms.
15. I conclude the appeal building was not in use for agriculture on 20 March 2013, but the evidence points to its last use being for agricultural purposes as part of an established agricultural unit. There has been no material change of use of the building to a dwelling – although the 2010 permission is implemented in part – or to any other use. Thus, the proposed development does not conflict with paragraph Q.1(a); it is permitted by Part 3, Class Q.
16. In reaching this conclusion, I have had regard to the appeal decision cited by the Council (APP/H1840/A/14/2224037) where it was found that a change of use of a barn to a dwellinghouse would not be permitted development because, although the building had only been used for farming and not residential purposes, it had been altered so as to have the appearance of a dwelling.

³ I would remain of that view whether or not the converted barn remains in the appellant's ownership.

⁴ The Council refers to 'A Practical Guide to Permitted Changes of Use' (Second Edition), Martin H Goodall (p96) and *W & JB Eastwood Ltd v Harrod (Valuation Officer)* (1971) A.C 160 cited therein.

⁵ Adding weight to that view, I note that Part 4, Classes A and B of the GPDO permit the provision on land for structures required temporarily in connection with or for the duration of operations being or to be carried out on adjoining land, and temporary uses of land for not more than 28 days in any calendar year. Under s57(2) of the Town and Country Planning Act 1990 as amended, where planning permission to develop land is granted for a limited period, planning permission is not required for the resumption, at the end of the period, of use for the purpose for which it was normally used before the permission was granted.

⁶ Subject to the Q.1(e) limitation to the termination of agricultural tenancies, which does not seem to apply here.

17. In that case, however, the works carried out were different in nature to those which have taken place here, and were found to have been on-going for some time. The other appeal was determined on its facts; I have taken the same approach but reached a different conclusion based on the evidence before me.

Conclusion and Conditions

18. For the reasons given above, I conclude that the appeal should be allowed and approval granted. The planning permission granted for the change of use from a building in agricultural use to a dwellinghouse under Article 3 and Schedule 2, Part 3, Class Q is subject to the condition Q.2(3) which specifies that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of three years starting from the prior approval date.
19. Pursuant to Part 3, paragraph W(13), additional conditions may be imposed on a grant of prior approval which reasonably relate to the subject matter of the prior approval. I have considered the conditions proposed by the Council.
20. It is not necessary to impose a condition specifying a time limit for the start of development, since that would duplicate Q.2(3). It is also unnecessary to impose a condition requiring compliance with the approved plans, since that is a requirement of Part 3, paragraph W(12).
21. Q.2(1) indicates that one of the prior approval matters is (c) contamination risks on the site. It may be necessary to determine whether, after the proposed development takes place, taking account of any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990. Any mitigation required can be secured by imposing a condition under paragraph W(13), so long as reasonable and necessary.
22. The County Council's Environmental Health services recommended that a condition be imposed on any grant of prior approval to require the carrying out of a risk assessment and, if necessary schemes for investigation and perhaps remediation. The Council agrees that such a condition should be imposed and this is not disputed by the appellant. Having regard to the agricultural use of the site I find that it would be reasonable and necessary to impose a condition of this nature.
23. I also agree with the Council that it would be reasonable and necessary to impose a condition requiring the submission of plans of the proposed windows and doors to the appeal building. These are not fully detailed on the submitted drawings, but design and external appearance of the building is a prior approval matter and should be of an acceptable standard to the Council.

Elizabeth Jones

INSPECTOR

Schedule of Conditions

- 1) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation, must not commence until Parts 1 to 6 have been complied with:

Part 1

A preliminary risk assessment must be carried out. This study shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this should be detailed in a report supplied to the Local Planning Authority. The risk assessment must be approved in writing before any development takes place.

Part 2

Where an unacceptable risk is identified a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11"

Part 3

Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved by the Local Planning Authority prior to any development taking place. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".

Part 4

Where identified as necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 5

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority.

Part 6

Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is

subject to the approval of the Local Planning Authority prior to the occupation of any buildings.

Part 7

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, these will be subject to the approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the Local Planning Authority prior to the occupation of any buildings.

- 2) Prior to their installation, a schedule identifying any windows and doors to be retained and refurbished and those which are to be replaced, accompanied by details of any new or replacement windows and doors comprising drawings at a minimum scale of 1:20 in addition to horizontal and vertical sectional drawings of the same, at a minimum scale of 1:2, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with those approved details and thereafter retained in that form.