



Appeal Decision

Site visit made on 19 July 2017

By Mr A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 2 August 2017

Appeal Ref: APP/J1860/W/17/3168952

**Barn at The Farthings, Gloucester Road, Castlemorton Worcestershire
WR13 6JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant approval required under a development order.
 - The appeal is made by Mr P Wilkes against the decision of Malvern Hills District Council.
 - The application ref 16/01312/PDU, dated 2 September 2016, was refused by notice dated 9 November 2016.
 - The development proposed is the conversion of a barn to a single dwelling-house.
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Decision

1. The appeal is dismissed.

Inspector's reasons

2. Mr Wilkes' submission is a simple one, namely, that express planning permission is not required for the proposed development, because the change of use of an agricultural building to a dwelling-house benefits from deemed planning permission by virtue of Article 3, Schedule 2, Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO'].
3. Having regard to the qualifying use pursuant to Q.1(a), the Council and Mr Wilkes broadly agree that the existing building was last used for agriculture. The owners of an adjoining property strongly disagree. I have reviewed all of the evidence presented and concur with the Council's assessment on this point. There is nothing firm to cast any doubt on Mr Wilkes' claim that the building was used for agricultural purposes in connection with farming of the wider holding.
4. Pursuant to Class Q subsection Q.2(1) – conditions, and provisions found in paragraph W of the GPDO, Mr Wilkes submitted a prior approval notification application to the Council seeking approval of the intended change of use. Subsequently, the Council refused that application on the basis that the proposal would not constitute PD. This is because the existing building's structural framework is not substantial enough to be capable of its conversion into a dwelling-house. In this appeal, I consider that the **main issue** is whether or not the proposed development constitutes PD.
5. Part 3 of the GPDO identifies various types of PD. Class Q is titled: '*agricultural buildings to dwellinghouses*'. This is defined in the following terms:

Class Q - Development consisting of – (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 (dwelling houses) of the Schedule to the Use Classes Order¹; and (b) building

¹ The Town and Country Planning (Use Classes) Order 1987 as amended.

operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within the Class C3 (dwelling houses) of that Schedule.

The relevant part of paragraph Q.1 states - Development is not permitted by Class Q if - (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 dwelling house; and

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i)..."²

6. The Planning Practice Guidance is a relevant consideration. The PD right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However it recognises that, for the building to function as a dwelling, some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. It is not the intention of the PD right to include the construction of new structural elements for the building. Therefore, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the PD right³. I consider that the Court's decision in *Hibbitt*⁴ is directly relevant. It is important to bear in mind that the statutory provisions in Class Q represent the entirety of the legal constraints on the type of building operations that may be performed as PD.
7. The appeal building comprises two elements - a pitched roof element and a single-storey lean-to side projection. It is about 8 m x 8 m wide and deep. It is characteristic of a lightweight utilitarian agricultural building. It has a timber portal frame, corrugated metal wall and roof covering, it is propped up by poles and the roof includes trusses and purlins spanning between gable-ends. It has an open side to its east-facing elevation.
8. The proposed residential conversion of the building would comprise internal and external alterations. The work inside mainly involves erection of subdividing partitions to create a separate living and kitchen quarter, a bedroom and bathroom. New services would be provided to afford the structure with the necessary wherewithal for day-to-day domestic existence. In addition, Mr Wilkes' report suggests that the existing wall plates around eaves level are in good condition. The building's change of use would not involve operations resulting in the demolition of any part of the existing structure.
9. The material facts show that external works would result in the replacement of metal sheets and roof coverings to meet current building standards. The east-facing elevation would be replaced by a new door and full-height glazed and timber weather board infill panels. New external walls and roof coverings would be installed. The timber portal frame acts as one unit and is an essential element of the building. It is connected to beams fixed at angles to the corresponding roof-pitch and is rigidly joined at the apex. It is supported by timber poles some 300 mm in diameter. The proposed layout suggests to me that alterations would be made to the supporting poles to facilitate the residential use. Yet there is no evidence to substantiate the claim that the timber frame and poles have load-bearing capacity; there are no calculations. There is considerable ambiguity because it is unclear whether the weight of the new external wall and roof cladding or linings would, in

² My emphasis added in the text above.

³ Paragraph ref ID: 13-105-20150305.

⁴ *Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin).

practice at least, be supported by the frame. I am therefore unable to conclude that the building is of sufficient strength to take any new loading.

10. The existing building does not have a load bearing floor slab and a new one would be required to meet current building standards. The vertical timber poles suffer from rot where they are embedded in the ground. The whole building would be propped up to allow the base of the posts to be replaced and the new ground bearing floor slab can then extend beneath these members as a permanent foundation. In my mind, the nature of this type of work suggests the frame would require reinforcing in order to improve its load-bearing capacity. I consider that sufficient information has been provided to show that the residential conversion would require the addition of new structural elements.
11. There is an added complexity because there is some doubt about the structural integrity of the existing building's foundations. The building has a lean although the report states it does not affect its stability. In my experience a lean of this type suggests some kind of potential ground movement, but there has been no soil investigation or excavation to check the strength of the foundations. In fact the report recommends intermittent underpinning and that approach reinforces my concerns about the potential conversion of this building. I consider that significant structural operations are required to convert this building in to a dwelling-house.
12. Pulling all of the above points together, as a matter of fact and degree, I find that the existing building would not be capable of functioning as a dwelling without significant additions or alterations such as new structural elements, a load-bearing floor slab and underpinning of the foundations. I am not persuaded that these works, taken together or separately, fall within the scope of building operations reasonably necessary to convert the building to a use falling within Class C3 in the Schedule to the UCO. Applying the principles established in *Hibbitt*, the type of building operations necessary to convert this building would result into a building that is substantially rebuilt or, in effect, the creation of a new building.
13. The proposal therefore fails at the first hurdle in that the proposed development would exceed limitations set out in Class Q of the GPDO. On the main issue, I find that the proposal would not constitute PD.

Conclusion

14. For all of the reasons given above, and having regard to all other matters, I reject Mr Wilkes' submission and I conclude that the appeal should not succeed.

A U Ghafoor

Inspector