
Appeal Decision

Site visit made on 17 July 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 18th August 2017

Appeal Ref: APP/T4210/W/17/3174779

Whittles Farm Barn, Turton Road, Tottington, Bury, BL8 3QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Roy Holland against the decision of Bury Metropolitan Borough Council.
 - The application Ref 61220, dated 5 March 2017, was refused by notice dated 28 April 2017.
 - The development proposed is prior approval application for the conversion of an agricultural building to form a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Regarding the description of the development proposed, the original application form states that reference should be had to the planning statement submitted. I have therefore taken the description of the proposal from the title of the planning statement.
3. The GPDO requires the local planning authority to assess the proposed development against the criteria set out in Class Q, taking into account any representations received. My determination of this appeal has been made in the same manner.
4. Schedule 2, Part 3, Class Q of the GPDO 2015 sets out that development is classed as permitted development if it consists of 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 (dwellinghouses) of the Schedule to the Use Classes Order; and building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of that Schedule.
5. This is subject to a number of situations where such development is not permitted, listed under paragraph Q.1, and to conditions in paragraph Q.2 setting out the circumstances when an application to the local planning authority for the determination as to whether the prior approval of the authority will be required.
6. In determining the application, the Council have referred to the 'Hibbitt'¹ case where it was held the building must be capable of conversion to residential use

¹ Hibbitt v SSCLG [2016] EWHC 2853).

without operations that would amount either to complete or substantial re-building of the pre-existing structure in order for a proposal to benefit from Class Q of the GPDO. The Council concluded that the scheme would not be permitted development on that basis and as such neither Q.1 nor Q.2 would be applicable.

7. However, the Council have also referred to Q.1 (i) where the development proposed would consist of building operations other than those listed to the extent reasonably necessary for the building to function as a dwellinghouse. The Council concluded that the scheme would not be permitted development in this regard either.
8. Notwithstanding that the Council concluded that the proposal was not permitted development it went on to consider whether prior approval would be required regarding the issues raised under paragraph Q.2(1). The Council, in consultation with Environmental Health, also refused to grant prior approval under part (c) which refers to contamination risks on the site. This is because no contaminated land assessment was submitted with the application.
9. The Council have not raised concerns with reference to any of the other matters identified at paragraph Q.2, as to matters that could require the Council's prior approval, and therefore I have taken this to mean that the Council concluded that prior approval would not be required for those matters.
10. I have considered the appeal on this basis.

Main Issues

11. Taking account of the above, I therefore consider the main issues to be:

- Whether the development proposed would be permitted development under the provisions of Class Q of the GPDO. In particular, whether the extent of the works proposed would fall within the statutory limits; and whether the proposal would consist of building operations to the extent reasonably necessary for the building to function as a dwellinghouse and thereby be excluded by Schedule 2, Part 3, Class Q.1 (i);
- If the proposal is permitted development under the provisions of Class Q.2 of the GPDO, whether the development would be acceptable in terms of the contamination risks on the site.

Reasons

Whether permitted development

12. The appeal building is a barn that has been used as an agricultural store. The building has a wooden frame construction. The elevations and roof are clad with corrugated cement board. In some places corrugated metal sheet has been used. There are large openings on two elevations.
13. The development proposed would see the conversion of the building to form a dwelling. The proposal would see the replacement of the existing cladding with Yorkshire boarding and lightweight insulated cladding on a steel frame. A new plastic coated corrugated steel roof would also be installed.

14. A prior approval application for a similar scheme was previously refused by the Council. This appeal proposal represents a slightly revised scheme that is intended to overcome the previous reasons for refusal.
15. As to whether or not the proposal would comply with Q. (b) and therefore fall within the development permitted by the Order, it is necessary to consider whether the building operations are reasonably necessary to convert the building to a use falling within Class C3(dwellinghouses). A definition of 'building operations' is not contained within Q. (b). Rather this is set out in Q.1 (i). Therefore in practical terms, when coming to a view on the proposal I consider that it is useful to assess the extent of the building operations proposed in the context of Q. (b), Q.1 (i) and also the advice set out in the PPG.
16. Planning Practice Guidance (PPG) gives advice on whether operations are 'reasonably necessary' or not. In regard to building works allowed under Class Q.1 (i) to change an agricultural building to residential use, the PPG states that the permitted development right 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.
17. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development 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 permitted development right.
18. The Council's building control department have advised on the works that they consider would be necessary to convert the building to a dwelling. These include the re-laying of the internal floor to include appropriate insulation and damp proof membranes and the likely need to undertake significant remedial / strengthening work to the timber frame of the building so it is able to take the weight of the increased loads from the proposed new roof covering, insulation and plasterboard.
19. Based on the information before me, there would be little left of the existing appeal building as a consequence of the proposal other than the structural timber frame. There would be new walls, a new roof, new flooring, existing openings would be closed and new ones created. The building works necessary to alter the existing building to a dwelling would therefore be extensive.
20. The appellant states that the proposed alterations to the building are reasonably necessary for the conversion. A letter dated January 2017 was submitted with the appeal from MPA Associates. This states that they are satisfied that the conversion measures would have no adverse effect on the structural performance of the existing structural framework of the building. However, there is no technical report attached to the letter setting out a detailed assessment of the structure of the existing building or a commentary

explaining how this conclusion was reached. For example, there is no structural method statement or structural calculations included.

21. It is reasonable to conclude that the proposed new roof covering, the Yorkshire boarding, lightweight insulation and plaster board would result in an increased load on the timber frame structure of the building when compared with the existing situation. However, in the absence of a detailed structural survey that clearly sets out an assessment of the appeal building and addresses the specific concerns raised by the Council's building control, I cannot be certain as to whether or not the existing timber frame could bear the structural load necessary to facilitate the proposal.
22. As set out above, the PPG states that the building would only be considered to have the permitted development right where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use. In the case of the appeal building, based on the evidence before me, it is likely that significant remedial and or strengthening work to the frame of the appeal building would be necessary so it is able to support the increased loads as a result of the proposed conversion works.
23. Accordingly, I consider that the proposal would consist of building operations that would go beyond what is reasonably necessary for the building to function as a dwellinghouse. Given this conclusion Class Q.1(i) would preclude the buildings from benefitting from permitted development under class Q.
24. In the context of the Order, the starting premise is that the permitted development right grants planning permission, subject to the prior approval requirements. Therefore the suggestion of allowing the appeal subject to a condition approving the principle of the change of use alone would not be in accordance with the provisions of the Order.

Prior approval

25. As I have concluded that the building cannot benefit from permitted development it is not necessary for me to consider the issue of prior approval in relation to contaminated land as the provisions of Class Q.2 are not applicable.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

V Lucas-Gosnold

INSPECTOR