
Appeal Decision

Site visit made on 22 August 2017

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 6 September 2017

Appeal Ref: APP/D0121/W/17/3175448

Land and building to the north of Felton Common, Felton, Winford, Somerset, BS40 9YN

- 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 (as amended).
 - The appeal is made by Mr Robert Wedlake against the decision of North Somerset Council.
 - The application Ref 17/P/0138/CUPA, dated 13 January 2017, was refused by notice dated 10 March 2017.
 - The development proposed is change of use from agricultural building to Use Class 3 (dwelling house) and associated development.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A signed and dated Unilateral Undertaking, under Section 106 of the Town and Country Planning Act 1990 (as amended), was submitted by the Appellant. I return to this matter later.

Main Issue

3. The main issue is whether the proposed conversion of the appeal building would meet the requirements of Class Q of the GPDO, in relation to:
 - (i) Whether the building operations amount to those reasonably necessary to convert the building to a dwelling house; and
 - (ii) Whether the effect on the living conditions, both of the occupiers of the existing caravan which is located adjacent to the appeal building and of the future occupiers of the appeal building, would be acceptable in terms of noise and disturbance, privacy and safety.

Reasons

4. The appeal property is an agricultural building resembling a metal box with steel cladding, including a shallow, monopitch roof. It is located some distance away from and to the south-west of, the main settlement of Felton. The appeal building lies towards the end of a long line of buildings, structures and out-

houses, including a few dwellings, which faces onto Felton Common, an open area of grassland, to the south-west. There is open countryside to the north, whilst there is a caravan immediately adjacent to the appeal property to the south-west. Access to the appeal building would be via a coal yard to the south-east. Both the caravan and coal yard benefit from Lawful Development Certificates (LDCs).

Issue 1 - Do the proposed building operations amount to those reasonably necessary to convert the building to a dwelling house?

5. The Appellant states that the proposal amounts to a conversion of the existing structure into a dwelling, and is of the view that the works which affect only the interior of the building do not involve development of the land. He therefore maintains that the proposed building operations fall within the scope of those permitted under paragraph Q.1 (i) of the GPDO. The Council, however, states that there are reasonable grounds to consider that the proposal includes the construction of new structural elements for the building, which the national planning policy guidance (PPG) states is not the intention of the permitted development right¹. The same paragraph also states: "It is only where the existing building is structurally strong enough to take the loading which comes from the external works to provide for residential use that the building would be considered to have the permitted development right".
6. The Council states that the internal works would comprise a double skin that will rely on additional foundations to support these walls, i.e. a new structural frame within the existing outer shell of the appeal building. This fundamental issue between the Council and the Appellant could have been resolved by the submission of a technical report to demonstrate that the existing building is strong enough to take the loading which comes from use as a dwelling. No such report has been submitted as part of the Appellant's evidence.
7. The Appellant's drawings clearly show a proposed inner wall. In the absence of an appropriate technical report, I cannot be confident, based on the evidence before me, that the existing outer walls are sufficiently strong to take the required loading and thus that the inner wall is not structural (as opposed to just providing internal insulation). I am therefore unable to conclude that the proposed building operations are reasonably necessary to convert the building into a use falling within Use Class 3 (dwelling house), as stated in paragraph Q (b) of the GPDO.

Issue 2 – (ii) Whether the effect on the living conditions, both of the occupiers of the existing caravan which is located adjacent to the appeal building and of the future occupiers of the appeal building would be acceptable in terms of noise and disturbance, privacy and safety.

8. The appeal building is accessed through a commercial site known as the coal yard; an LDC was granted in October 2012 for the use of the land and associated buildings to be used as a coal yard for the storage, preparation, sale and distribution of solid fuel and bottled gas. Such a use, in close proximity to the appeal building, is likely to cause noise and disturbance to future occupiers of the proposed dwelling, for example through operational activities and lorry movements.

¹ PPG Paragraph 105 Reference ID-105-20150306 *Are any building works allowed when changing to residential use?*

9. Although the Appellant points out that the use of the site as a coal yard has ceased, and therefore can be classified as abandoned, the site is still being used for the storage of steel shipping containers. This in itself implies continuing lorry movements, although planning permission has not been sought for this, and the situation is therefore far from clear. Taking these factors into consideration, I cannot be sure beyond reasonable doubt that the coal yard can be classified as abandoned.
10. The Appellant accepts that the proximity of the proposed dwelling to an operational coal yard, together with the access running through this yard, would be undesirable in terms of impact on the living conditions of future occupiers of the appeal building and on the safety of vehicles and pedestrians passing through the coal yard.
11. His signed and dated unilateral undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended), states that he is committed to implement a number of obligations upon commencement of the appeal development in order to overcome the Council's concerns. In summary, these include: to cease using the coal yard for its lawful purpose, or any other lawful purpose which would be detrimental to the living conditions of future occupiers of the dwelling; to remove all items that would prejudice vehicular access to the dwelling; and to remove the adjacent residential caravan and ensure it is not returned to the same position at any time thereafter.
12. The local planning authority's (LPA's) comments on the submitted UU highlight a number of concerns. These include the fact that the UU is signed only by one of the persons referred to on the registered title, which would limit the enforceability to that person only. There are also concerns over the unwillingness of the Appellant to provide title deeds of the land in question to the LPA, or to include a precise identification of the land in which the person entering into the obligation is interested, as required by Section 106 (9) (b) of the Town and Country Planning Act 1990.
13. The Council also sheds further doubts on the effectiveness of the UU to deliver safeguards to meet the LPA's concerns. These include the use of words which do not correspond to the Law Society's defined terms and a lack of clarity relating to the uses which the coal yard would be restricted from. The Council also queries the usefulness of the definition of the 'same position' to which the caravan would not return in order to accord with the provisions of the UU.
14. It might be the case that the intention of the obligations could address some of the Council's concerns in relation to living conditions and safety. However, I am not persuaded that the Appellant's Statement and Supporting Statement robustly address the serious and comprehensive concerns of the Council, which concerns I share. I therefore consider the UU to be fundamentally flawed and unenforceable. As such, it would not secure an acceptable living environment in terms of noise and disturbance, privacy and safety for future residents of the proposed accommodation. There would be conflict, in this regard, with criteria (a) and (b) of Class Q.2 (1) of the GPDO.
15. The Council expresses concerns relating to the impact on the living conditions of the existing occupiers of the caravan and on future occupiers of the appeal building, due to their mutual close proximity. I consider, based on the very close juxtaposition of the caravan to the appeal building, both with windows directly facing each other, that this would result in unacceptable mutual harm

to the living conditions of both the occupiers of the caravan and future occupiers of the appeal building from lack of privacy, noise and disturbance, in addition to any noise emanating from the coal yard.

16. Based on the above considerations, I am not persuaded that the UU would be effective in addressing the concerns I have just outlined. I therefore conclude on the second main issue, that the harm to the living conditions, both to the occupiers of the existing caravan and to the future occupiers of the appeal building would not be acceptable. As such the proposal would fail criteria (b) and (e) of Class Q.2 (1) of the GPDO.

Other considerations

17. Both parties referred me to a recent High Court ruling, referred to as the Hibbett Case². Whilst there are some parallels between the Hibbett case and the case before me, there are also some significant differences. A key difference is that in the Hibbett case, the Inspector accepted that, based on the Appellant's structural calculations, the steel frame and existing foundations of the appeal building were capable of taking the level of loading required. I do not have that technical information in the case before me. There are also significant structural differences between the Hibbett building and the appeal structure before me. I therefore place limited weight on the Hibbett case in relation to this appeal.

Conclusion

18. For the reasons given and having regard to all other matters raised, I consider, having regard to the related guidance in the PPG, that the works proposed go beyond what might be considered as reasonably necessary in relation to a conversion and therefore falls outside the scope of Class Q. In addition, it is my view that the siting of the appeal building, in such close proximity to a coal yard and residential caravan, would make the proposal undesirable from the point of view of the living conditions of both the occupiers of the existing caravan and future occupiers of the proposed dwelling. I also have safety concerns regarding the access and egress to and from the appeal building via the coal yard. On balance, therefore, I conclude that the appeal should not succeed.

Mike Fox

INSPECTOR

² Hibbett v SSCLG [2016] EWHC 2853 (Admin); 09/11/2016.