



Appeal Decision

Site visit made on 24 October 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 20 November 2017

Appeal Ref: APP/E2001/W/17/3179153

Land at Westwinds Farm, Occupation Lane, Swanland HU14 3QZ

- 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) Order 2015 (as amended).
 - The appeal is made by A & M Farms Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/16/04123/AGRNOT/WESTES, dated 7 December 2016, was refused by notice dated 31 January 2017.
 - The development proposed is change of use of agricultural building to form 2 dwellings with associated alterations.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have also dealt with another appeal (Ref: APP/E2001/W/17/3179160) on this site. That appeal is the subject of a separate Decision.
3. The description of the proposed development was not provided on the original application form. Therefore, I have used the description set out on the Decision Notice in my decision which provides an appropriate explanation of the proposed development.

Main Issue

4. The main issue is whether the proposal is permitted development having regard to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) and, if so, whether prior approval is required in relation to the matters listed in paragraph Q.2.(1) of the GPDO.

Reasons

5. The appeal relates to a concrete and steel agricultural barn situated within a farm complex, known as Westwinds Farm. The complex has several other existing buildings on the site which are in related uses to the barn. The site is located approximately 1km north of Swanland in the open countryside of the Yorkshire Wolds and is predominantly surrounded by agricultural land. The character and appearance of the wider area is of a rolling countryside landscape and the wider complex is visible in the surrounding area, particularly from the public highway to the north due its position on rising land.

6. The appellant states that the proposed development would result in the conversion of the agricultural barn structure into two dwellings. The building operations would involve the construction of a new roof, a first floor wall above the existing ground floor breeze block wall with cladding to the external first floor, a full new wall to one side elevation, internal walls, an internal mezzanine to create a first floor area and the installation of large glazing panels that would infill between the concrete frame of the front of the structure. I note that all of these operations accord with the criteria of Class Q.1. or are internal works which do not constitute development as defined by Section 55(2)(a) of the Town and Country Planning Act 1990.
7. However, it is evident that the existing structure is significantly open-sided. The west and south sides are entirely open with only supporting concrete pillars in place. The east side has a breeze block wall at ground floor level and corrugated sheeting above, although some of these have been removed. The north side is the most intact and represents the only elevation which is completely built up. Having considered this, I note that there is no specific description as to when a conversion becomes a rebuild. In my view, much of the extensive list of proposed works would be new and would not necessarily have formed part of the agricultural barn structure previously. Therefore, the works would not only create substantial alterations but they would also go beyond what would be considered as reasonably necessary to convert the barn and facilitate its change of use.
8. The existing barn is a simple structure. I note that the proposed change of use seeks to utilise the existing building as far as possible. However, in doing so, it would be necessary to undertake extensive and substantial construction works to create a useable and successful residential building. As such, I find that the existing building is not capable of being converted through building operations that would be considered reasonably necessary in Class Q(a) and (b) of the GPDO.
9. I have had regard to the Hibbert judgement¹ to which the Council has referred. The judgement relates to the assessment of proposals against Class Q(a) and (b) and the subsequent assessment against criteria within Class Q.1. It states that where a proposal does not meet the free-standing requirements of Class Q(a) and (b), the criteria in Class Q.1. become irrelevant in the assessment of that proposal as it cannot be considered to be permitted development. As a result, whilst the works proposed within the appeal scheme accord with Q.1.(i) of the GPDO, the extent of those proposed works would be of such significance that the existing structure cannot, in my view, be reasonably converted within the provisions of Q.1.(i). Therefore, I find that the proposal cannot benefit from the relevant permitted development rights.
10. Notwithstanding this, the Council has assessed the proposal against the criteria within Class Q.1. Whilst the proposed works would accord with the above criteria, I note that the Council argues that the works to facilitate the proposed change of use would be substantially more than would be reasonably necessary to convert the existing structure to a dwelling. I acknowledge the appellant's point that the proposal attempts to work within the existing parameters of the barn structure as far as possible to achieve the closest possible conversion scheme. Furthermore, I note that the proposed development would include elements of the existing frame and structure which would be capable of bearing the loads associated with the proposed change of use. Moreover, these matters are not in dispute between the Council and the appellant.

¹ Hibbert, and Another v SSCLG and Rushcliffe Borough Council [2016] EWHC 2853 (Admin): 9 November 2016

11. Nonetheless, having considered the above, I find that the benefits of the proposal would not outweigh the fact that the substantial extent and nature of the proposed works and alterations would result in something more than the conversion of the existing barn. In my view, the proposed works would create a fundamentally new building which would not represent the change of use, as proposed. Moreover, based on the evidence, I have seen nothing that would lead me to a different assessment to that of the Council with regard to this proposal. As a result, I find that the proposal would not constitute permitted development.
12. Consequently, as the proposed change of use is contrary to the restrictions contained within the GPDO and the proposed works would constitute a new building rather than a conversion of the existing barn, I conclude that the proposal would not be permitted development. The Council was therefore correct to refuse the application in accordance with paragraph W(3) of the GPDO. It is, therefore, not necessary for me to go on and assess whether prior approval would be required in relation to matters listed in paragraph Q.2.(1) of the GPDO.

Other considerations

13. The appellant states that the Council's decision to refuse prior approval was received after the 56 day period had expired. As such, it is argued that the application should have been given deemed consent. From what I have seen and read, whilst the application was received by the Council on 7 December 2016, I note that due to the inadequacy of a submitted Site Plan, it was not validated until 15 December 2016.
14. Notwithstanding this, based on the date that the application was received by the Council, the 56 day period would have lapsed on 3 February 2017. The Decision Notice is dated 31 January 2017 and the Council confirms that it was sent to the appellant's agent by post. As such, on the balance of probability, I find it unlikely that the decision did not reach the agent until 6 February 2017, as the appellant indicates. Moreover, the Decision Notice submitted by the appellant in evidence has no date stamp on it. Therefore, having had due regard to the above and based on the evidence before me, I find that the Council issued the Decision Notice and notified the appellant in a timely manner within the 56 day period.
15. The appellant refers to a number of other appeal decisions relating to matters pertinent to this case. As such, I have had due regard to these and considered them accordingly. However, I note that these other decisions were made prior to the Hibbert judgement and therefore they have limited weight in that respect. Moreover, I must assess the proposal before me on its own merits, having regard to material planning considerations. I confirm that I have done so in this case.

Conclusion

16. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR