
Appeal Decision

Site visit made on 23 October 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 18 December 2017

Appeal Ref: APP/V2723/W/17/3179108

West View, Langdale, Melsonby, Richmond, North Yorkshire DL10 5PW

- 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 Richard Derrick against the decision of Richmondshire District Council.
 - The application Ref 16/00856/APDN, dated 21 October 2016, was refused by notice dated 3 January 2017.
 - The development proposed is change of use of agricultural building to a single dwellinghouse.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for the change of use of agricultural building to a single dwellinghouse at West View, Langdale, Melsonby, Richmond, North Yorkshire DL10 5PW in accordance with the terms of the application Ref 16/00856/APDN, dated 21 October 2016 and the plans submitted with it, subject to the conditions in the Order and in the schedule attached to this decision letter.

Preliminary Matters

2. Schedule 2, Part 3, Class Q of the Order permits development consisting of (a) a change of use of an agricultural building to a dwellinghouse and (b) building operations reasonably necessary to convert the building. Paragraph Q.1 of the Order sets out circumstances where such development is not permitted.
3. There is no dispute between the main parties that the proposal would comply with those circumstances covered by the provisions of paragraphs Q.1 (a) to (e), (g) and (h), and (j) to (m).
4. The Planning Practice Guidance (PPG) points out¹ that the Class Q permitted development right assumes that the agricultural building in question is capable as functioning as a dwelling. It goes on to state that a building is only considered to have this permitted development right where the existing building is structurally strong enough to take the loading of external works for the residential use and that it is not the intention of the permitted development right to include the construction of new structural elements for the building.

¹ Paragraph: 105 Reference ID: 13-105-20150305.

5. Notwithstanding the description of the development proposed, the application form has indicated that it is proposed to change the use of an area of land within the building's curtilage. Paragraph Q. (a) of the Order includes the change of use of any land within the curtilage of the building. The plans accompanying the application show a relatively modest and tightly drawn area around the building within the 'red line'. I have determined the appeal on the basis that this delineation is the curtilage and consider that it accords with the meaning in paragraph X. of the Order which defines the limitations of a building's curtilage for the purposes of Class Q.

Main Issue

6. The main issue raised by this appeal is whether or not the proposed development is permitted development under the provisions of Schedule 2, Part 3, Class Q of the Order, with particular regard to the extent of construction of new structural elements.

Reasons

7. The building is a large, linear structure which the appellant advises is a former livestock building. The corrugated, fibre cement roof is supported by trusses on top of concrete columns which are infilled with a mixture of brick and concrete block walls. The building has been repaired with works to the roof structure. These works include the addition of a series of new steel purlins alongside existing purlins, replacing ties on trusses which had previously been removed and adding cross bracing between trusses in a bay.
8. In support of his application the appellant provided a Method Statement advising that the work would not involve new structural elements, albeit that the roof would be repaired. Nevertheless, the appellant's Structural Report accompanying his application concluded that the structural elements of the building were suitable for retention subject to repairs being carried out to the trusses. Following the Council's decision and before making his appeal it is evident that the repairs were carried out. In support of his appeal, a letter from the appellant's Structural Engineer, supported by detailed calculations and design for the repairs, and dated after the Council's decision, confirms that in its repaired form the structure is capable of carrying loadings associated with residential accommodation.
9. The Council may well have been correct in their view regarding the structural condition of the building at the time they took their decision. However, I have to consider the appeal on the basis of material considerations which apply at the time of my decision. This includes the building in its existing condition and in light of the evidence presented by the appellant in this respect, which the Council have had an opportunity to consider.
10. This evidence demonstrates that the building as it exists now is capable of conversion without new structural elements. This situation has been reached by the repairs to the roof structure. Nevertheless as they have already been carried out I consider that this would meet the PPG requirement that the "**existing** building is structurally strong enough" (my emphasis).
11. Paragraph Q.1 (f) of the Order does not permit the change of use and conversion if development permitted under Classes A(a) or B(b) of Part 6 of Schedule 2 of the Order (relating to agricultural and forestry buildings and

operations) has been carried out since 20 March 2013. The Council have queried whether the repair works could have benefited from the Part 6 permitted development rights given the recent history of building no longer being part of an agricultural unit. However, the appellant contends that the repair works did not constitute development in any event and consequently would not have been permitted development.

12. In setting out the meaning of “development”, section 55 of the Town and Country Planning Act 1990 (the Act) includes, amongst other operations, structural alterations of or additions to buildings. However, at section 55(2)(a) it then sets out operations which are not to be taken as development for the purposes of the Act. These include “the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, or do not materially affect the external appearance of the building”.
13. Whilst I consider that some of the works carried out could be considered structural alterations and/or additions they can also reasonably be considered to have been for the building’s maintenance, improvement or alteration and do only affect the building’s interior. In reaching this view I have taken into account the findings of an Inspector on an appeal² referenced by the appellant where there were some parallels with regards to repairs carried out to an agricultural building, albeit acknowledging the material differences between that scheme and the one before me. I therefore consider that the repair works were not development (permitted under the Part 6 of the Order or otherwise) and as such the conversion works would accord with the requirements of paragraph Q.1 (f) of the Order.
14. In light of my findings above and the appellant’s Structural Engineer’s comments, including those of 17 October 2017 addressing the Council’s concerns over other aspects of the building, I consider that the conversion works would not consist of building operations other than those set out in the provisions of paragraph Q.1 (i) of the Order.
15. I have carefully considered the Council’s position that the carrying out of the repair works prior to the submission of the appeal effectively circumvented the approach of the permitted development right. The circumstances have clearly changed since the Council took its decision and the appellant advises that the works were carried out in the interests of health and safety and the longevity of the building. Nevertheless, whatever the reason for the works, the consequence is that they have repaired the building. On the basis of the evidence before me, as it exists the building’s conversion would accord with the requirements and limitations of the permitted development right.
16. The Council have drawn my attention to two recent appeal decisions³ in support of their position. However, it is evident that the circumstances in those cases, particularly with regard to the extent of structural works proposed and the evidence provided, are materially different to those in the appeal before me. They have therefore not led me to alter my view on the permitted development status of the proposal.

² APP/X1355/W/16/3160459.

³ APP/V2723/W/16/3160083 and APP/V2723/W/16/3142951.

17. The Council's Statement addresses whether the prior approval of various matters would be required under the provisions of Paragraph Q.2 of the Order and finds that they would not, with the exception of the design and external appearance of the building. I agree that prior approval of those other matters is not required but that of design and external appearance is. However, the simple external appearance of the proposed dwelling would not harm the rural character and appearance of the area and I consider that prior approval should be granted in that respect. Detailed matters of materials, detailing and appearance could reasonably be considered by way of a condition.

Conditions

18. In granting approval the Order requires, at paragraph W.(12)(a), that the development must be carried out in accordance with the approved details and, at paragraph Q.2.(3), that the development is permitted subject to the condition that development under Class Q(a), and under Class Q(b), must be completed within a period of 3 years starting with the prior approval date.
19. In the interests of preserving the area's character and appearance it is necessary to approve details of windows, doors and external materials as well as a landscaping scheme. Requiring the parking facilities to be provided and retained will ensure that there is adequate and safe parking provision. It is also necessary to require that the development takes place in accordance with the proposed site plan which indicates areas, beyond the development site itself, within the vicinity of a Scheduled Ancient Monument where no storage or excavations should take place to avoid any damage to that monument.
20. The Council have suggested conditions requiring that the boundaries of the curtilage to be defined and that no additional structural works take place over and above those proposed. However, my Preliminary Matter above explains the basis on which the prior approval has been considered and it would not, therefore, be necessary to establish curtilage by way of a condition. Should the appellant or future occupiers wish to change the use of land beyond this for domestic purposes this would need to be considered separately.
21. Prior approval has been granted in accordance with the terms of the application and a condition requiring working drawings and structural works would be superfluous and not be within the spirit of the permitted development. Should a materially different or more extensive structural approach be subsequently proposed this would be likely to be outside the terms of this prior approval. It would therefore not be reasonable to attach conditions in these respects and in these circumstances.

Conclusion

22. For the above reasons, and having taken into account all other matters raised, the appeal is allowed.

Geoff Underwood

INSPECTOR

Schedule of Conditions

- 1) No external materials, windows, doors or architectural detailing shall be used in the development without details, and samples as appropriate, being first submitted to and approved in writing by the Local Planning Authority.
- 2) The dwelling shall not be occupied until there has been submitted to, and approved in writing by the Local Planning Authority, a detailed scheme of landscaping. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out no later than the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 3) The dwelling shall not be occupied until the related parking facilities have been constructed in accordance with the approved plans. Once created these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 4) No storage, vehicle parking or excavation is to be carried out as part of or in connection with the development within the hatched areas indicated on Proposed Site Plan Ref P3380/03.