



Appeal Decision

Site visit made on 13 December 2017

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2018.

Appeal Ref: APP/J3720/W/17/3180514

**Lime Tree House Barns, Meon Hill, Lower Quinton, Stratford-upon-Avon
CV37 8QT**

- 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 Stuart Jackson against the decision of Stratford on Avon District Council.
 - The application Ref 17/01051/COUQ, dated 7 April 2017, was refused by notice dated 15 June 2017.
 - The development proposed is prior approval notification for the proposed change of use of two agricultural buildings to 1 no. dwellinghouse and ancillary garage, associated curtilage and building operations (Class Qa and Qb).
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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) (GPDO) for the change of use of two agricultural buildings to 1 no dwellinghouse and ancillary garage, associated curtilage and building operations (Class Qa and Qb) at land at Lime Tree House Barns, Meon Hill, Lower Quinton, Stratford-upon-Avon CV37 8QT in accordance with the terms of the application Ref 17/01051/COUQ, dated 7 April 2017, subject to conditions in the attached schedule.

Background and Main Issue

2. The Council's decision notice provides two reasons for refusal of prior approval for the proposal. These both relate to the extent to which works that have either already been carried out, or which would be required, go beyond those permitted under paragraph Q.1 (i) of the GPDO. Although not referenced in the decision notice, the Council's officer report raises concerns over whether the building constitutes an agricultural building under the definition of paragraph Q.1 (a) of the GPDO. The appellant has addressed this in his evidence and as it is a fundamental question as to whether permitted development rights exist, I consider this to be a main issue for the appeal.
3. The Council has not indicated that it has any other concerns, including those matters which require prior approval under paragraph Q.2 of the GPDO. Neither have they raised any concerns over the conversion of the smaller building to an ancillary domestic garage. There is nothing before me that would lead me to a different conclusion. Accordingly, the main issue in this

case is whether the appeal building benefits from the relevant permitted development rights, with particular reference to the limitations in paragraphs Q.1 (a) and Q.1 (i) of the GPDO, having particular regard to;

- Whether the appeal building meets the relevant definition of an 'agricultural building'; and
- Whether the works required would be reasonably necessary for the building to function as a dwellinghouse.

Reasons

Agricultural Building

4. Paragraph Q.1 of the GPDO states that development is not permitted by Class Q if the site was not solely used for an agricultural use as part of an established agricultural unit on 20 March 2013 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or in the case of a site which was brought into use after 20 March 2013, for a period of at least 10 years before the date development under Class Q begins.
5. The Council's concern relates to works that were undertaken to the building in May 2016. Reference is made to structural improvements, including the reinforcing of existing purlins and a new slab floor. Section 55(2)(a) of the Town and Country Planning Act 1990 (TCPA) states that the carrying out of maintenance, improvement or other alteration of any building which affect only the interior of the building, or do not materially affect the external appearance of the building, do not constitute development. There is dispute between the parties as to whether the works carried out meet this definition or not. In the context of Class Q.1(a)(iii), the implication of the Council's position is that it considers development to have already taken place. If I were to accept this, then it would render any further consideration unnecessary as prior approval cannot be given for development that has already begun.
6. Notwithstanding the disputed works, the Council acknowledges that the current use of the building is agricultural and all evidence points to this having been the case for a significant period of time. It is clear from the photographic evidence provided by the appellant that the works described had no effect on the external appearance of the building. Moreover, although the Council has provided photographs of the works, there is little before me which illustrates the previous state of repair of the building. As such, there is nothing which clearly demonstrates that maintenance or repair was not required or that the works went beyond what might have been reasonably necessary to ensure the building could continue to function adequately for agricultural use. There is certainly no indication that any works carried out amounted to rebuilding.
7. Taking all matters into account, I am not convinced by the evidence before me that the works constitute development under s55(2)(a) of the TCPA. I am also mindful that the works had been completed prior to a previous prior approval application and were not identified as development at that time, nor were any concerns raised over whether the building met the requirements of paragraph Q.1 (a). Accordingly, I am satisfied that the building was in use as an agricultural building on 20 March 2013 and there has been no development or

change of use since that time. As such, the building meets the requirements of paragraph Q.1 (a) of the GPDO.

Building Works

8. The appeal relates primarily to a single storey steel portal framed building with timber cladding on three sides, a concrete floor and corrugated sheeting roof. The remaining side of the building is open. The proposed works include a new wall on the open elevation which would include doors and windows, a low dwarf wall on the northern elevation and parts of the eastern and western elevations, interior wall, floor and roof insulation, wall and floor protective membranes and a replacement metal profiled roof. Internal partitions would be required to create individual rooms. There would be no new openings in any of the existing walls.
9. Class Q(b) of the GPDO refers to building operations that are 'reasonably necessary' to convert the building being considered permitted development. The GPDO does not define what is meant by 'reasonably necessary'. However, both parties have referred me to the recent *Hibbitt*¹ court judgement, which provides important guidance as to how this element of the GPDO should be interpreted.
10. The building does not have to be capable of functioning as a dwelling in its existing state in order to benefit from permitted development rights. Class Q allows for works that could be extensive in nature and includes provision for the installation and replacement of walls, windows, doors, roofs and for partial demolition. However, in the above judgment the Court held that in order for the permitted development right to apply, the development proposed must fall within the concept of a 'conversion' as opposed to a 'rebuild' or 'fresh build'. Whether or not the proposed works go beyond the scope of conversion is a matter of fact and degree and requires an element of judgement.
11. The National Planning Practice Guidance (PPG) makes it clear that it is not the intention of the permitted development right to include the construction of new structural elements. It further states that the permitted development right only applies where the existing building is structurally strong enough to take the loading which comes with any permitted external works. I am satisfied that the existing building would require no new structural elements in order to carry out the proposed works.
12. However, while this weighs in favour of the development, it is not necessarily decisive. In the *Hibbitt* case the Inspector concluded the framework would be structurally sound, but that the extent of the works required still went beyond what was reasonably necessary. The judge accepted this and concluded that the development in that case was, in all practical terms, starting afresh with only a modest amount of help from the original structure. The appeal in the *Hibbitt* case would appear to differ to that before me as the building in question was open on three sides and would have been stripped down to the frame only. This is not the case here. The existing building is of sturdy construction, enclosed on three sides and a considerable proportion of the existing building would be retained, including the steel frame, slab floor, timber cladding, sheeting rails and purlins.

¹ *Hibbitt and another v Secretary of State for Communities and Local Government and another* [2016] EWHC 2853 (Admin)

13. I also consider the appeal² drawn to my attention by the Council is not entirely comparable to that before me. In that case, the works involved new structural elements in the form of new foundations and the construction of three exterior walls. The proposal before me requires no new structural elements and would only see one new wall constructed, which does not fall outside the works envisaged under paragraph Q.1 (i)(i) of the GPDO. I have noted the Council's comments on the nature of the timber cladding, but other than the installation of insulation and weather proofing, there would be no other alterations to these structures. It is reasonable to assume that the conversion of most agricultural buildings would require additional insulation to bring them to the standard of a dwellinghouse and thus I see these works as being reasonably necessary. The proposed dwarf walls are also minor in scale and would not go beyond what would be necessary to carry out the conversion.
14. The appellant has drawn my attention to a successful appeal³ which also differs in some details from the current appeal, particularly in the nature of the existing walls. While this decision post-dates the *Hibbitt* judgement, there is nothing to suggest it was considered in light of its findings. In any event, I have considered the appeal on its own merits based on the evidence before me and my observations of the site.
15. Taking all matters into account, I am satisfied that the works required would be reasonably necessary to convert the building into a dwellinghouse and would not constitute 'rebuild' as described under *Hibbitt*. Accordingly, the development would not exceed the limitations set out in paragraph Q.1 (i) of the GPDO.

Conditions

16. The GPDO imposes standard conditions for each class of development. However, as set out in Schedule 2, Part 3, paragraph W.(13) prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested additional conditions which I have considered in accordance with the guidance contained in the PPG.
17. The GPDO requires at paragraph W.(12)(a) that the development shall be carried out in accordance with the details approved by the local planning authority, though I have still included a condition listing the approved plans in the interests of clarity and certainty. I have imposed the suggested condition on the approval of materials in the interests of the character and appearance of the area. I have made a minor amendment to this in the interests of clarity and consistency. I have imposed the suggested conditions in relation to the nature and implementation of the vehicular access in the interests of highway safety. Finally, I have imposed the suggested condition relating to foul and surface water to ensure the site can be adequately drained.
18. The Council's officer report concludes that there is no evidence of the site being contaminated and no risks have been identified. The suggested condition relating to Phase 1 Desk Study Report is not therefore considered necessary or reasonable in this case.

² APP/J3720/W/16/3153579

³ APP/J3720/W/16/3158818

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 7895-100 Rev D, 7895-201 Rev A, 7895-301 Rev B, 7895-401 Rev G, 7895-400 Rev C, 7895-600 Rev B and FD-SS/2017/010.
- 2) No works shall commence until samples of the external facing and roofing materials to be used in the construction of the development have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved materials.
- 3) The development shall not be occupied until visibility splays have been provided to the vehicular access to the site in accordance with drawing number 7895-600 Rev B. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.
- 4) The access to the site for vehicles shall not be used in connection with the development until it has been surfaced with a bound material for a minimum distance of 7.5 metres as measured from the near edge of the public highway carriageway.
- 5) The access to the site shall not be reconstructed in such a manner as to reduce the effective capacity of any drain or ditch within the limits of the public highway.
- 6) Gates/barriers erected at the entrance to the site for vehicles shall not be hung so as to open to within 7.5 metres of the near edge of the public highway carriageway.
- 7) No works shall commence until a scheme for foul and surface water disposal has first been submitted to and approved in writing by the local planning authority; the development shall be implemented in accordance with such approved details prior to the first use of the building and shall be retained thereafter.