



Appeal Decision

Hearing Held on 20 February 2018

Site visit made on 20 February 2018

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2018

Appeal Ref: APP/J1860/X/17/3179644

The Oak Trees, Highwood Lane, Eastham, Worcestershire WR15 8PB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Peter Annetts against the decision of Malvern Hills District Council.
- The application Ref 16/01357/CLE, dated 14 September 2016, was refused by notice dated 11 January 2017.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is existing works to convert the existing barn into residential dwelling as approved under 15/00982/PDU.

Summary of Decision: The appeal is dismissed.

Background

1. The barn at The Oak Trees subject of the appeal was erected as a modern steel framed 4 bay agricultural building. The submitted plan¹ together with photographs in the evidence show that the building comprised a structure which was enclosed by a dwarf block wall on three sides with cladding above. The east elevation had two open bays and double doors enclosed the remaining bays. A shallow roof pitch over the entire building was covered with corrugated sheeting. In my description of the building, I refer to the four bays as numbered from 1-4, with number 1 being at the southern end.
2. Prior Approval was granted in September 2015 for works to convert part of a barn to a dwelling. The submitted floor plan shows that the northern-most bays, (3 & 4) of the building would remain in use as a workshop. The residential accommodation was proposed in the southern 2 bays only (1 & 2).
3. On 3 February 2016 there was a devastating fire and the barn was severely damaged. The nub of the dispute between the parties is the effect of the fire on the Prior Approval for the proposed change of use and associated works.

¹ Drawing Number TD-PA-001

Main Issue

4. The main issue is whether the Council's decision to refuse a Lawful Development Certificate (LDC) was well founded. This turns on whether the works necessary to secure a change of use from agriculture to residential use are materially different after the fire to those approved in September 2015.

Reasons

The Prior Approval

5. There is no dispute between the parties that at the date of the Prior Approval the building was in agricultural use, it was on an agricultural holding and the works shown on the submitted plan did not exceed the tolerances and limitations of Schedule 2, Part 3 Class Q of the GPDO². Class Q(a) grants deemed permission for the change of use of an agricultural building to use as a dwelling house and Q(b) permits building operations reasonably necessary to convert the building.
6. The works permitted by Q(b) are limited to the installation or replacement of windows, doors, roofs or exterior walls or services to the extent reasonably necessary for the building to function as a dwellinghouse. It also permits partial demolition as is reasonably necessary to carry out those building operations.
7. The National Planning Policy Guidance (NPPG) provides further guidance in the interpretation of permitted development rights for the change of use of agricultural buildings. In particular this states that "it is not the intention of permitted development rights to include the construction of new structural elements for the building". It continues "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".³ Information received by the Council at application stage from the applicant confirmed that the building was structurally sound.
8. Schedule 2, Part 3 Class W sets out the procedure for applications for Prior Approval under Part 3. W(2) says, amongst other requirements, that an application for Prior Approval must be accompanied by a written description of the proposed development and a plan indicating the site and showing the proposed development. In turn W(12) says that the development must be carried out "in accordance with the details approved by the local planning authority".
9. Thus Prior Approval was granted solely for the works described and in accordance with Drawing TD-PA-001. This work did not include substantial reconstruction and could be undertaken only on the premise that the barn was structurally sound.

The Fire

10. The fire commenced at about 09.00 hrs on the 3 February 2016 and either started within the northern (workshop) end of the building or in a container

² The Town and Country Planning (General Permitted Development) (England) Order 2015

³ NPPG Paragraph 105 Reference ID 13-105-20150305

parked to the rear of the building. There was mixed evidence at the Hearing in terms of the intensity and spread of fire, but the contemporaneous photograph and the report by the Hereford and Worcestershire Fire and Rescue Service who attended the blaze both indicate that the damage to the building was very significant. In particular the official report of the Fire Service commented that the whole building was damaged. They also said that petrol and oil products caused the fire to spread fast and cylinders within or adjacent to the building exploded during the incident. The fire was not put out by the Fire Service until at least midday.

11. The photograph of the fire indicates that the northern end of the building (Bays 2-4) was the most badly affected whilst the southernmost bay 1 was the least affected. In the immediate aftermath of the fire the appellant said that he took down some structural parts of the building to avoid further damage; this included the steel portal at bay 2 and the twisted steelwork at the northern end. All the roof purlins were destroyed or charred beyond repair. Thus photographs taken on 8 February, 5 days after the fire, show a damaged skeletal structure, surrounded by a dwarf masonry wall and a few remaining sheets of cladding on the south east corner of bay 1. Bay 1 was at that time a stand-alone structure and there was very limited retention of the original structural elements of the barn.

After the fire

12. The appellant provided a structural appraisal of the building which was compiled following a visual site inspection on 6 July 2016, 5 months after the fire. This concluded that the steel frame showed no signs of significant deterioration and the structure was fit for conversion to a habitable dwelling. It further concluded that "this situation had not deteriorated as a consequence of the recent fire". This appraisal was made after considerable work had been undertaken at the appeal site and it did not in any event consider whether or not structural works were necessary in order to facilitate a dwelling.
13. The July report and contemporaneous photographs were subsequently assessed in a desk study by the Council's appointed consultant. He concluded in December 2017 that "little of the structure of February 2016 would (could) remain without modification".
14. It is not clear when the rebuilding of the barn commenced as the evidence is inconsistent. However by 18 March 2016 the steel framework for bay 2 had been re-erected or replaced and new roof purlins spanned bays 1 & 2. It is common ground between the 2 construction experts at the Hearing that this work was structural and the appellant's surveyor said that the new purlins were larger and stronger than those lost in the fire. Both experts also said that the timber framework subsequently erected was also structural and that this was designed to provide some lateral support to the building which was previously provided by the dwarf masonry wall; this wall was demolished by the appellant sometime between March and July 2016.
15. Both structural experts at the Hearing said that the barn required significant and extensive structural strengthening and alterations in order to provide a dwelling. What was not agreed was whether the fire damage

increased the amount of structural work over and above that which was originally intended.

The nature and scope of the works permitted by the Prior Approval

16. The appellant said that it had always been his intention to undertake significant structural rebuilding and strengthening of the barn as part of the works to provide a residential unit at The Oak Trees. He said that the structure of the original agricultural building was inadequate to take the additional loads which would be necessary. Notwithstanding this, he added that the steel frame in bays 1 & 2 had survived the fire without any significant buckling or distortion. Thus, whilst the fire was unfortunate and damage had occurred, the appellant argued that this did not alter the totality of the works that would have been necessary. In these circumstances he says that the fire did not invalidate the terms of his Prior Approval.
17. Neither the details nor the plan submitted with the application for the Prior Approval indicate any structural alterations. This was confirmed in the supporting information for the application. The appellant's evidence at that stage asserts that the building was structurally sound and capable of being converted without substantial reconstruction.
18. However the appellant now argues that the plans of the proposed works are "indicative only" and thus are not binding. In particular, relying on *I'm Your Man Ltd*⁴ it was suggested that, because the approved plan was not the subject of a condition, the planning permission was not restricted by the details on the plan. However *I'm Your Man Ltd* concerns a limitation on a permission which was not backed up by a condition which triggered the cessation of that permission. The circumstances in this case are not comparable.
19. The Courts have held that the meaning of a planning approval should be apparent from its face. In this case the words "in accordance with the details submitted with the application (site location plan at a scale of 1:1250 and plan number TD-PA-01)" within the main operative part of the planning permission provide a clear and unambiguous account of the terms on which the permission is granted. As I have noted above, Class W of Part 3 of the GPDO says that development (permitted by a Prior Approval) must be carried out in accordance with the approved details.
20. There is no evidence, other than the assertions made at the Hearing, that prior to the fire the intention of the appellant was to undertake significant structural works. The Council's structural expert said that it may well have been possible, for example, to retain the existing roof structure, albeit some strengthening would have been required. After the fire that was no longer feasible because the entire roof and purlins had been damaged beyond all practical repair or re-use. The Courts held in *Hibbitt*⁵ that it was a matter of fact and degree in each case, but for a building to benefit from Class Q rights it must be capable of conversion to residential use without operations which amount to either complete or substantial re-building of the pre-existing structure. The nature and extent of the works had to fall

⁴ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107

⁵ *Hibbitt v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

short of a substantial reconstruction or extensive structural works which the NPPG advises fall outside the works permitted by the GPDO. Class Q(b) permits **conversion**⁶ only which the Court agreed was conceptually different to a rebuild.

21. There is no evidence that the works approved in September 2015 included significant structural work or rebuilding. However after the fire such structural work was essential and the skeletal barn had to be reconstructed, thus involving works which, as a matter of fact and degree, amounted to the erection of a new building.

Does the Prior Approval allow the works which are now necessary to enable the change of use?

22. The evidence about the date work on the barn commenced is inconsistent at best and in any event those works probably have been undertaken unlawfully because the pre-commencement conditions have not been discharged. But neither of these matters is determinative in terms of the appeal before me.
23. However, as was pointed out by the appellant, the Prior Approval has been granted and that approval stands unless it is formally revoked by the Council. In this matter the appellant relies on *Gleeson*⁷ which says other than in limited circumstances such as formal revocation under Section 97 of the Act there is no power to withdraw a permission.
24. The Council says that it has no intention of withdrawing the permission but in the light of the effect of the devastating fire, the approved works permitted by that permission had, in effect, been lost⁸. This is because following the fire there was no building left that could be converted. Class Q only gives permission for conversion not for the erection of what is effectively a new building and in the circumstances of the extensive fire damage it was no longer possible to carry out the building operations for which permission had been granted.
25. In coming to this view I have taken account of the findings by the appellant's structural engineer following a visit to the appeal site in July 2015. The July report did not in any event test the strength of the remaining structure; its focus was a visual inspection to identify whether the steel framework had become distorted or weakened and whether it could be retained in the works to provide a residential unit. It did not conclude that no other structural work was necessary. Indeed, the two structural experts at the Hearing agreed that further investigations were needed and it was all but inevitable that substantial structural work would be necessary to meet the appropriate standards for residential occupation.
26. After the fire little remained of the barn other than the skeletal frame at the south end. As a matter of fact and degree there was thus no building to convert. It follows that the works undertaken at the appeal site following the fire are unlawful.

⁶ My emphasis

⁷ *Gleeson Development Limited v SCLG* [2014] EWCA Civ 1118

⁸ *North Norfolk DC v Long and SoS* [1984] JPL 45.

Conclusions

27. I accept that the fire has had a devastating effect on the appellant both in terms of his proposed conversion and future ambitions for a home on his holding and it also has had an adverse impact on his personal and economic wellbeing. But, whilst I have considerable sympathy for his misfortune, these are matters that I cannot apportion weight because an LDC must be decided only in the context of whether or not the development is lawful.
28. There was agreement between the opposing structural experts at the Hearing to the degree that they both accepted that works needed to provide a dwelling in the southern end of the barn were both structural and substantial. None of these structural works were permitted by the terms of the 2015 Prior Approval. That approval was for the conversion of an existing barn with the associated works being limited to those permitted by Class Q.
29. Whether or not the appellant intended, prior to the fire, to replace, for example, all the purlins, he did not have approval to do so. However after the fire there was as a matter of fact and degree no longer a building on the appeal site which could be converted to a dwelling. The photographs confirm that other than the concrete pad and part of the steel frame there was nothing left. Even if the steel frame could be re-used, the extent of the works necessary to secure a change of use from agriculture to residential use was and is materially different after the fire to the works approved in September 2015.
30. In these circumstances the appellant is unable to implement the Prior Approval and that approval has effectively fallen with the building. Thus on the balance of probabilities and as a matter of fact and degree the existing works are unauthorised.
31. Consequently, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

32. The appeal is dismissed.

Sukie Tamplin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Garvey	Of Counsel
Peter Annetts	Appellant in person
Colin Davies	Building Surveyor: Aedis Group

FOR THE LOCAL PLANNING AUTHORITY:

Dean Kinsella	Area Planning Officer, Malvern Hills District Council
Daniel Wilson	Enforcement Officer, Malvern Hills District Council
John Teasdale	Solicitor, Malvern Hills District Council
Mark Brock	Structural Engineer, MBCE Projects Ltd

INTERESTED PERSONS:

Mrs Sue Burrows	Clerk to Eastham Parish Council
Roger Chedgoy	Local resident