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## Appeal Decisions

Site visit made on 27 February 2018

**by P N Jarratt BA DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 April 2018**

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**Appeal A Ref: APP/FO114/C/17/3181630**

**Appeal B Ref: APP/FO114/C/17/3181631**

**Parcel 7259, Hayeswood Road, Bath, BA2 0HH**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Best Choice Investment Ltd and Appeal B is made by L Mujaj (Best Choice Investments Ltd) against an enforcement notice issued by Bath & North East Somerset Council.
  - The enforcement notice, numbered 17/00091/ENFAPL, was issued on 7 July 2017.
  - The breach of planning control as alleged in the notice is the erection of a building.
  - The requirements of the notice are to demolish or dismantle the building (including the concrete floor slab) marked as 'X' on the plan attached to the notice and remove all resultant material from the land.
  - The period for compliance with the requirements is 3 months.
  - The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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### Procedural matters

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.
2. The appellants have submitted a Statement of Common Ground, which is an unusual practice in appeals determined under the written procedure. However, the Council chose not to agree the contents of the document as it was considered unnecessary to do so.

### Decision

3. The appeals are dismissed and the enforcement notice is upheld.

### The site and relevant planning history

4. The appeal site is a field in open countryside adjacent to the B3115 and A39 and is located in the Bristol and Bath Green Belt. At the time of my site inspection, the structure consisted of a structural steel framework with timber studwork around part of the structure, on a concrete pad which had a number of waste openings inserted within it.
5. In August 2014 a prior approval request for the change of use from an agricultural barn to a dwelling was refused (14/02615/ADCOU).

6. In December 2014 a prior approval request for the change of use from an agricultural barn to a dwelling and associated operational development was refused (14/04991/ADCOU).
7. In May 2015 a prior approval request for the change of use from an agricultural barn to a dwelling and associated operational development was approved (15/1268/ADCOU).
8. In May 2016 an application for the conversion of an existing agricultural building to residential (part retrospective) was refused (16/01286/FUL). An appeal was dismissed in March 2017 (APP/F0114/W/16/3163432).
9. An application for an LDC to reaffirm prior approval consent 15/1268/ADCOU was withdrawn in March 2017.
10. In May 2017 a Temporary Stop Notice was issued following the re-commencement of work with the excavated floor of the building refilled, a new concrete floor laid, new vertical steel posts installed and wooden stud walls erected to part of the building. A Stop Notice was issued in July 2017.

### **The appeals on ground (b)**

11. An appeal on this ground is that the breach of planning control alleged in the notice has not occurred as a matter of fact.
12. The appellant contends that no new building has been erected and that the building is a pre-existing agricultural building which has been altered by works carried out lawfully in the course of converting it into a dwellinghouse, either expressly authorised by the permission or as *de minimis* departures from the approved plans or that they are internal works not constituting development. The Council deemed the building was suitable for conversion under Class Q of the GPDO<sup>1</sup>.
13. From the Council's account, a site visit in November 2015 identified that the ground level had been lowered and that new steel sections had been bolted to the original vertical steel posts which formed the frame of the barn. The roof and walls had been removed. A further visit in December 2015 indicated that new internal and external concrete block walls had been erected. This work stopped and a partly retrospective planning application for conversion of the building to residential was refused (16/01286/FUL) in part because the barn is incapable of conversion without substantial reconstruction.
14. The subsequent appeal was dismissed. Paragraph 4 of the Inspector's decision states *"There was a barn on the site but it does not exist now. As the parties agree, the ground levels have been excavated, foundations and new dwarf block walls and plastic drain runs installed. The metal framework of what was clearly the original barn, as confirmed by the Council's photograph of the original barn in 2014 before the work commenced, has been raised in height by bolting it to new sections of steelwork which protrude about a metre above the ground. But the works required to provide a dwelling in this position, including the above retrospective works, could not by any stretch of the imagination be described as conversion works. On the contrary they would constitute a new building, which is why planning permission is required, hence this appeal"*.

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<sup>1</sup> Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

15. The appellants consider that the Inspector's decision should be disregarded due to the narrow basis of that appeal and that the Inspector erred in assuming the Class Q consent did not survive, although the appellants accept that there was nothing unlawful about the decision on its particular facts. The appellants appear to rely heavily on the fact that the Council had accepted the building could be converted when issuing the Class Q consent. However, this approach fails to recognise the significance of the works carried out which had not been made known to the Council at the time they considered the prior approval request.
16. Although the appellants chose not challenge the appeal decision, they instead carried out further works in the form of a new floor, wooden studwork, the removal of steel post extenders and other work which led to the issuing of the Stop Notices. These works are described in section 6 of the statutory declaration of 22 January 2018 by Valentino Muja, an employee of Best Choice Investment Ltd. The Council considers that this work may have been an attempt to show the building as it once stood and that it is not a true representation of the original building in view of the amended position of the steel post shown in Appendices 5 and 6 of the Council's statement and the addition of under slab pipes for foul drainage. Whether such works are *de minimis* or the pipes may not represent development is something of an academic matter in the light of the Inspector's clear conclusion that the barn no longer exists. If the barn no longer existed at the time of his decision, then what existed on site at the time the enforcement notice was served is a building as defined in s336 and must have been a new building.
17. I therefore conclude as matter of fact that the structure on site is a new building.
18. The appeals on this ground fail.

### **The appeals on ground (c)**

19. The appellant contends that there has not been a breach of planning control as much of the work falls within the prior approval reference 15/1268/ADCOU, or does not require planning permission or is *de minimis*.
20. Prior approval was granted subject to three conditions relating to the approval being for the change of use of the existing agricultural barn to a dwelling (use class C3); a contamination condition; and a condition requiring the development/works to be implemented in accordance with existing and proposed Drawing Sht-01A. This drawing is annotated with a general description of the building works which in summary refers to the cladding of the building in vertical boarding which will be attached to the existing concrete blockwork or studwork; to the steelwork being shot blasted; the dirt floor excavated to suitable level and a new insulated ground bearing slab laid; new roof, new doors and windows; and a new foul water drainage system. The officer delegated report identified that the applicant had stated that the size of the building would not be altered, that the structure of the building would remain and that the block walls would be retained.
21. It is reasonable to assume that the appellants in seeking prior approval had come to their own conclusion that the development qualified for the permission granted under the Order; in other words, that there is no conflict with any limitation or condition to the permitted development right. It is also reasonable

- to assume that the Council should have been able to rely on the accuracy of the information before them in determining the application.
22. However, the works that were carried out went beyond what had been stated in the application. Following a site visit in November 2015, the Council advised the appellants that the works carried out to the barn had taken the development outside the scope of Class Q and that these works invalidated the prior approval. Additionally reference was made to significant earthworks although these do not form part of the allegation in the notice.
23. The appellants have made submissions regarding the application details and annotated drawing (Sht -01A) together with a description of the legal framework in respect of Class Q permitted development and relevant procedures. The appellants state that “..the Council granted the permission pursuant to a valid prior approval application..” based on the information submitted as part of the application, and that this was following two previous applications. Additionally, they state that the planning permission had ‘crystallised’ at the point the permission was issued and that the permitted development could be lawfully commenced at that point. They say that implementation works have been lawfully carried out fully in accordance with the details approved by the local planning authority. The excavations and the new floor slab were expressly permitted without limitation on the depth of those excavations, and, although the alterations to the steel-frame posts were not authorised, they were reasonable and necessary to facilitate the conversion with any structural benefit being incidental. The appellants consider this to be *de minimis* in relation to the permission; they are minor departures from the plan that do not prevent the lawful commencement of the permission; and, the Council’s legal interpretation of Class Q ignores the practical reality that conversions will frequently involve other building operations falling outside the list at Q.1 (i)(i). It is further contended that as no part of the steel frame will be visible on completion, these operations do not involve development and permission is not required.
24. Part Q expressly permits development consisting of—  
 (a) *a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and*  
 (b) *building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3(dwellinghouses) of that Schedule.*
25. Paragraph Q.1 sets out the limitations on development which is not permitted by Class Q. Paragraph Q.1 (i) does not permit development under Class Q(b) if it would consist of building operations other than—  
 (i) *the installation or replacement of—*  
     (aa) *windows, doors, roofs, or exterior walls, or*  
     (bb) *water, drainage, electricity, gas or other services,*  
     *to the extent reasonably necessary for the building to function as a dwellinghouse;*  
     and  
 (ii) *partial development to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i) (i).”*

26. The GDPO is clear in that permission is granted for the change of use of a building with any building operations limited to the above. The works carried out are for a conversion and not for a re-build. Planning Practice Guidance<sup>2</sup> at paragraph 105 provides guidance stating *"It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use."* It also advises that *"Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floorspace permitted, or internal walls, which are not prohibited by Class Q"*.
27. The appellants point out that the revised Guidance removes a previous reference to the structural capability of the building and states that "...it is only where the existing building is already suitable for conversion to residential use that the building should be considered to have the permitted development right.
28. Although the guidance has been amended, the GDPO remains as set out in the Statutory Instrument and the limitations of Paragraph Q.1 remain extant. The Order itself makes no such distinction between structural and non-structural works, and it places no restriction on whether works are structural or not. Nevertheless, the Guidance is relevant when considering whether operations are 'reasonably necessary' or not.
29. On this basis, if a building is capable of conversion to a dwelling, it is likely that the works to do so would be considered reasonably necessary. However, the nature of those works would still need to fall within the operations permitted under Q.1(i).
30. Total demolition of the existing building does not fall within Class Q, but partial demolition does to the extent reasonably necessary for the building to function as a dwelling.
31. The excavation and installation of foundations are not included in the list of permitted operations set out in Q.1(i). New foundations are also likely to go beyond 'maintenance, improvement or other alteration' which would be exempted from any requirement for planning permission under s55(2)(a) of the TCPA since they would lead to the construction of a new building.
32. Underpinning involves the strengthening of the foundations of an existing building or structure. Again it is considered that such works would be excluded from permitted development under Q.1(i). Whether such works would be excluded from the s55(2)(a) exemption as a matter of fact and degree.
33. The extensive rebuilding of an agricultural building which goes beyond conversion as specified in the Order will not be permitted development. It was held in *Hibbitt v SSCLG [2016] EWHC 2853* that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building.
34. Nothing in the Order permits any development contrary to any condition on any express or deemed planning permission.

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<sup>2</sup> 13-105-20180222

35. The appellants contend that the works that have been carried out comprise a lawful commencement of the permitted development and cite the usual legal authorities in support<sup>3</sup>. However this loses sight of the fact that if the limitations associated with Class Q changes of use are not met, then there is no deemed planning permission under the Order. It is for the appellants to ensure that the development that is implemented conforms to the conditions and limitations of the Order and with any additional conditions imposed by the Council.
36. In the light of the evidence before me, the works that have been carried out and the earlier Inspector's conclusions, I conclude that the works amount to re-building and not conversion. I do not regard the work done to the steelwork to be *de minimis* but part of substantial re-building fundamental to changing the nature of the works from conversion to a new building. Accordingly, the development that has occurred falls outside the scope of the prior approval reference 15/1268/ADCOU and no planning permission exists for what has been carried out on site.
37. The appeals on this ground fail.

### **The appeals on ground (f)**

38. An appeal on this ground is that the steps required to comply with the notice are excessive and lesser steps would overcome the objection.
39. The appellants contend that the removal of the entire building goes beyond that necessary to rectify the alleged breach of planning control and the alterations are not so drastic that the original building must be now treated as having been totally demolished or destroyed such that no part of the original lawful structure remains. This is illustrated by the fact that some of these features have been reversed such as the reinstatement of the original steelwork and back-filling of the excavated floor without any discernible change to the original structure. The overall result is that other than the removal of the timber framework, nothing more is required to remedy the breach.
40. The appellants consider that the Council has no legal power to order the removal of the existing building as it is lawful being the same building, or substantially the same building, as previously existed on the site. This is a lawful fall-back position safeguarded in the principles of the EU Convention for protection of private property (Article 8 and Article 1 of the First Protocol).
41. The building is a new building in the Green Belt which is not for agricultural purposes and for which no very special circumstances exist. It does not benefit from either express or deemed planning permission as it does not constitute permitted development. The prior approval permission for the change of use to a dwelling cannot be implemented and the building that did benefit under 15/0126/ADCOU no longer exists in a form that permits its lawful change of use as provided for in the Order.
42. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in

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<sup>3</sup> Commercial Land Ltd/Imperial Resources SA v SSTLGR and another [2002] EWHC 1264 (Admin)



this case do not exceed what is necessary to remedy the breach. The only way to remedy the breach is for the building as erected to be removed. There is no fall-back position and the erection of any building on the site would require approval.

43. The protection of the public interest cannot be achieved by means which are less interfering of the appellants' rights. They are proportionate and necessary in the circumstances and hence would not result in a violation of their rights under Articles 1 and 8 of the European Convention on Human Rights.

44. The appeals on this ground fail.

### **Other matters**

45. The appellants have referred to an appeal<sup>4</sup> decision but the circumstance of that case are quite different as they relate to an appeal against a Lawful Development Certificate in respect of the grant of planning permission by a Council and not to planning permission granted by an Order.

### **Conclusion**

46. For the reasons given above I consider that the appeals should not succeed.

*P N Jarratt*

**Inspector**

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<sup>4</sup> APP/C3430/X/17/3176413