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## Appeal Decision

Site visit made on 14 August 2018

**by W Johnson BA (Hons) DipTP DipUDR MRTPI**

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

**Decision date: 5 November 2018**

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**Appeal Ref: APP/A0665/W/18/3202166**

**Agricultural Building, Barhill Farm, Barhill Drive, Tushingham, Whitchurch, SY13 4QU**

- 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 Martin Downes against the decision of Cheshire West & Chester Council.
  - The application Ref 18/00383/PDQ, dated 29 January 2018, was refused by notice dated 24 April 2018.
  - The development proposed is the change of use of agricultural building to two dwelling houses.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Revised National Planning Policy Framework (the Framework) was published in July 2018, after the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal, and the subsequent comments submitted by the appellants on 10 August 2018, in reaching my decision.
3. Amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) came into force in April 2018, I have taken this into consideration in reaching my decision.
4. For clarity and brevity, I have taken the description of development from the Council's decision notice, since this accurately and more succinctly describes the proposal.
5. The appellant has submitted amended 773 MMD 200 06 REV A with his appeal. I have dealt with the appeal on this basis.

### Background and Main Issues

6. Class Q of Schedule 2, Part 3 of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses). Additionally, Class Q allows building operations and partial demolition which are reasonably necessary to convert the building to a Class C3 use.

7. The Council refused the application on the basis that the change of use would not be permitted development having regard to the building operations proposed and the size of the proposed curtilage. In determining whether or not the proposal would be permitted development, it is necessary for me to consider whether the requirements set out in the GPDO for development to be permitted under Class Q would be met.
8. The main issues in this appeal are whether the proposed change of use constitutes permitted development pursuant to Class Q of Schedule 2, Part 3 of the GPDO, having particular regard to:
  - (a) Whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), with particular regard to whether the extent of the proposed structural works to the building go beyond those permitted under Class Q;
  - (b) whether the size of the proposed curtilage exceeds that allowed under Schedule 2, Part 3, Paragraph X of the GPDO; and
  - (c) Whether a determination was made by the Council within the 56-day statutory period.

## **Reasons**

### *Building operations*

9. Paragraph Q.1.(i) states that development is not permitted by Class Q if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The proposal includes alterations, which include new exterior walls, windows, doors, roofing and internal works.
10. Paragraph 105 of the PPG provides further clarification. The guidance states that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the works to provide for residential use that the building would be considered to have permitted development rights. Paragraph 105 also states that internal works are not generally development.
11. The Council has acknowledged the appellant's report concluding in the Officer Report that the barn has sufficient structural integrity to be capable of accommodating the conversion. However, concern has been raised with regards to the total amount of works involved in order to make the building function as a dwelling, which they consider would amount to substantial re-building rather than works reasonably necessary to undertake the conversion.
12. Both parties have drawn my attention to *Hibbitt v. SSCLG* [2016] EWHC 2853 (Admin), which I consider to be a material consideration, which I give moderate weight in the determination of this appeal. The evidence provided demonstrates that the building is structurally capable of conversion as proposed without the requirement of additional structural elements. The appellant has submitted a structural survey with the application which is not disputed by the Council. The survey has been prepared by a company of

chartered consulting engineers, who have confirmed that the structure of the existing building is adequate for the proposed additional loadings. I have no reason to disagree with these findings.

13. Whilst a number of external works are proposed there is no reason to conclude that substantial works would be required to enable the residential conversion of the building or that the works required would be extensive. I consider that the steel frame, walls and foundations of the existing building that would remain, would be structurally strong enough to take the loading which comes with the external works proposed. I find that the nature of the works involved in the conversion and building operations described don't amount to rebuilding the barn. For these reasons given above, I conclude that the proposed development would comply with paragraph Q.1 (i) of the 2015 GPDO in terms of the extent or scale of building operations being reasonably necessary to convert the building with respect to Class Q.(b)

#### *Curtilage*

14. Class Q permits development consisting of 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 or the change of use together with building operations reasonably necessary to convert the building. Paragraph X provides an interpretation for terms used in Part 3 of the GPDO. For the purposes of Class Q curtilage means "(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser".
15. The proposed location and block plans submitted with the application showed land outlined in red around the barn that originally equated to 1330m<sup>2</sup>, as described on the application form. However, the appellant has amended this to reduce the area of curtilage to 430m<sup>2</sup>, which is marginally less than the proposed floor space of the building. The land is immediately beside the agricultural building and I note the appellant has also indicated that an area of hardstanding beside entrance one and two would still provide parking, but this now does not fall within the red line.
16. Moreover, whilst the entire area within the red line does not include all attributes associated with the residential conversion, such as the proposed areas of car parking, the area therefore, which would benefit from the permitted change of use to residential, would still be considerably larger than the area occupied by the building itself. Consequently, the development would include land beyond the curtilage of the building, having regard to the definition contained within paragraph X of the GPDO. It would not therefore consist of the change of use of a building and land within its curtilage and thus would not be development permitted by Class Q(a).

#### *56 day statutory period*

17. The GPDO is structured so as to grant permission for the various classes of "permitted development" described in Schedule 2. For each class, the type of development is set out under the heading "Permitted Development". Next, under the heading "Development Not Permitted", any restrictions or limitations

to the type of development authorised are listed. This is followed, in most of the classes, by a list of conditions under the heading "Conditions".

18. The grant of planning permission is made through the operation of article 3(1) of the GPDO and the provisions for "permitted development" in the relevant class of Schedule 2. To qualify as permitted development, a proposal has to come fully within the relevant description of "permitted development" provided for the relevant class. If it does not, the provisions for "Conditions" applicable specifically to that class of permitted development cannot relate to it.
19. In this case, for the provisions relating to conditions in paragraph Q.2 to come into play, the proposed development would have to fall squarely within the description of "permitted development" in Class Q: that includes complying with the various restrictions and limitations set out at paragraph Q.1 under the heading "Development not permitted".
20. If the proposed development does fall within that definition, the condition set out at paragraph Q.2(1), requiring the developer to apply to the Council for a determination as to whether its prior approval would be required in respect of a range of specified details, becomes relevant. Importantly, this condition does not impose on the Council a duty to decide whether or not the development in question is, in fact, permitted development under Class Q: its sole function is to enable the Council to determine whether or not prior approval would be required for those specified details of that particular permitted development.
21. The effect of this is that if the Council were to decide that its prior approval was not required, the condition would be discharged and the developer could proceed with the permitted development – though not with any development which was not permitted development. If on the other hand the Council failed to make a determination (or to provide written notification of that determination) within the period specified by the GPDO, again the developer could proceed with the permitted development, but again not with any development that was not permitted development. The developer would not at any stage have planning permission for development that was not, in fact, permitted development.
22. The appellant states that they received confirmation from the Council in a letter that the application had been received on 30 January 2018. Therefore, the Council had until 27 March 2018 to issue a determination within the statutory 56-day period. On the evidence before me, the Council's determination came an additional 28 days after the target date, on 24 April 2018. It therefore failed to make a determination within the statutory 56-day period. However, as I have found that the proposal would not be permitted development under Class Q, on expiry of the 56 days, the development was not deemed to have been granted permission, which means the appellant could not lawfully carry out the proposed development, because it would still be the case that the development was not "permitted development" under the GPDO.

### **Other Matters**

23. The appellant has raised a number of concerns about the Council's handling of his application, and the advice he was given (or failed to give) prior, and subsequent, to its determination. While these are concerns which may perhaps be pursued through other channels, they are not relevant to my determination of this appeal and cannot influence my decision on the matters here at hand.

## **Conclusion**

24. Whilst the development would meet the limitation under paragraph Q.1(b) of Class Q, it would consist of the change of use of a building and land within its curtilage from a use as an agricultural building to a use falling within Class C3 and would result in the curtilage being larger than the land area occupied by the agricultural building, in conflict with the limitation in paragraph X (a).
25. I conclude therefore that the proposal would not be permitted development under Schedule 2, Part 3, Class Q of the GPDO. There is as such no need for me to consider whether prior approval is required in relation to the location of the building having regard to Condition Q.2(1)(e).
26. For the reasons given above, I conclude the evidence fails to demonstrate that the proposals would be permitted development and therefore the appeal is dismissed.

*Wayne Johnson*

INSPECTOR