



Appeal Decision

Site visit made on 20 May 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 09 July 2019

Appeal Ref: APP/B3030/W/18/3218853

Fern Hollow, Greaves Lane, Edingley, Newark, Nottinghamshire NG22 8BJ

- 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 Miss Victoria Herrington against the decision of Newark & Sherwood District Council.
 - The application ref 18/01895/CPRIOR, dated 8 October 2018, was refused by notice dated 13 December 2018.
 - The development proposed is a change of use of an existing agricultural building to class C3 dwellinghouse, including the creation of a domestic curtilage.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the appellant was notified within 56 days from submission of the application and if not,
 - whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GDPO.

Reasons

Notification of decision

3. This appeal relates to an application for a change of use of an agricultural building to a dwelling under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). Paragraph W of the GDPO sets out the procedures which are required to be followed during the prior approval application. The appellant contends that the proposal is permitted development and she was not informed of the decision within the statutory 56 day period.
4. The Council appears to have taken the start date for the 56 day notification period from the date the application was validated. The form was signed on 8 October 2018 and validated by the Council on 18 October 2018. Paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) states that the start date is the date upon which the application is received by the Council. The application would have been

received at some point between 8th and 18th October 2018 and I have not been provided with a receipt date.

5. The Decision Notice was issued on 13 December 2018, the 56th day following validation. Although the Council made their decision on 13 December, which they considered to be within the 56 day notification period, paragraph W(11)(c) requires that the applicant is 'notified' by this date. Section 7 of the Interpretation Act 1978 states that notification must be posted in sufficient time for the "ordinary course of post". The appellant states that the notice was sent by second class post and not received until 17 December 2018 and I have no reason to consider that this is not the case.
6. As either start date is after the 56 day notification period and the appellant was not notified of the decision within this period, the permitted development could proceed. However, this is dependent upon the change of use being considered as permitted development within the terms of Schedule 2, Part 3, Class Q of the GDPO. The appellant contends that this proposal is permitted development and I will discuss this further.

Whether the proposal is permitted development

7. The appeal relates to a disused barn which is accessed from Greaves Lane via a gated track. The barn is in two parts, with a higher structure to the rear which has a rear lean to and a single storey front section. The structure sits on a concrete pad and is constructed from timber telegraph poles with concrete block walls to all but the front which is open. Internally, it is split into pens by block work. The roof and walls are clad with corrugated steel sheets and although the roof is intact, throughout the building much of the steel cladding is missing.
8. Class Q of Part 3 of Schedule 2 of the GPDO (Class Q) states at paragraph Q.1.(i) that development under Class Q(b) is not permitted if it would consist of building operations other than: installation or replacement of windows, doors, roofs or external walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations. Paragraph 105¹ of the National Planning Practice Guidance (NPPG) states that internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space are also permitted.
9. The NPPG states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. It indicates that for the building to function as a dwelling some building operations which would affect its external appearance, and which would otherwise require planning permission, would be needed and should be permitted. The NPPG further clarifies that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Consequently, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide the residential use that the building would be considered to have the permitted development right.

¹ Paragraph: 105 Reference ID: 13-105-20180615. Revision date: 15 06 2018.

10. This proposal would involve demolition of the lean to at the rear of the barn; removal of the remaining steel cladding; construction of a front wall incorporating the entrance door and windows; construction of walls above the existing blockwork with cedar wood cladding; a new roof; introduction of an upper floor and addition of a balcony. The dado walls appear to be retained within this proposal. Their condition was discussed in a previous appeal² which assumed they would be demolished and rebuilt due to the condition of their foundations.
11. A structural inspection report was prepared by Opus Structural Surveys dated November 2015. Based upon observations of the building during my visit, I have no reason to believe the recommendations of the report are not accurate. This view is supported by the previous appeal which concluded that the wooden framed structure of the barn was structurally strong enough to support the residential conversion to a single storey dwelling. The report concluded that when converting barns this may entail some minor works to the foundations such as underpinning or a booted raft foundation. The summary goes on to say that if the proposal for the barn is as above, which I am concluding requires the works to the wall foundations, there is no reason for concern regarding the existing structure.
12. The GPDO does not define what is meant by 'reasonably necessary' building operations. However, the court judgement in the case of *Hibbitt v SSCLG* [2016], considers how this element of the GPDO should be interpreted. The judgment found that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial rebuilding of the pre-existing structure or, in effect, the creation of a new building. If the proposals would amount to rebuilding, or starting afresh, the appeal should be dismissed as the proposed development would be outside the relevant Class. Whether or not the proposals go beyond the scope of conversion is a matter of fact and degree and requires an element of judgement.
13. There are many similarities between this case and the *Hibbitt* judgement which in that case utilised the steel frame and existing roof with construction of side walls. Although there are dado walls present within this barn, the structural report discusses improving their foundations which would be an additional structural operation. The previous inspector considered that the walls would not be load bearing, but I do not have sufficient information before me to reach that conclusion. If the dado walls are currently inadequate for inclusion within the proposal without structural improvement, in effect, the construction would only use the existing concrete pad and frame. This would therefore constitute starting afresh as set out in the *Hibbitt* decision.
14. Although installation of a second floor/mezzanine may be permitted development, both the previous appeal and the structural report refer to a single storey structure and do not mention a second floor/mezzanine. This raises doubt that it has been considered within the structural report and whether the timber frame can support the second floor/mezzanine in addition to the external works. Also, although the dado walls are referred to as non-load bearing within the previous appeal, the structural report advises that they be underpinned. I therefore do not have sufficient evidence regarding the

² APP/B3030/W15/3138083.

construction of the dwelling to be certain that it does not require structural work which would not be permitted within Class Q.1 (i).

15. The appellant has submitted officer reports for four recent planning decisions by the Council. The first is at Upton Lodge³ involving a block and metal sheet building which requires rendering to the ground floor, cladding above, a zinc covering to the roof and a chimney flue addition. The second example is at Thurgarton Quarters⁴ with a concrete portal frame with sheet metal cladding. Conversion involves recladding the existing external panels and cedarwood cladding of areas below. The third example is at Newafeld Farm⁵ involving an open sided steel frame portal building. Conversion requires construction of walls although few other details are given to allow me to draw any conclusions. The final example is at Meadow Farm⁶ involving a part breeze-block and corrugated sheet building. The conversion requires replacement of one wall with timber cladding and cladding of the existing other walls. In all cases addition of doors and windows were included.
16. A recent allowed appeal⁷ has also been brought to my attention. Externally, this conversion involves addition of a new roof with reuse of the lower part of the perimeter walls. In this case the inspector considered that the work involved was conversion rather than rebuilding. In each of the examples provided the proposed works appear to be of a lesser scale than those within this proposal. No mention is made of the foundations or the roof which, in addition to the structural frame, appears to be retained in all cases. I also have no knowledge of the full details of these applications or the appeal with respect to their structural features. For this reason, it is not possible to make direct comparisons between this appeal case and other examples cited.
17. In conclusion, the scale of proposed works to provide a habitable dwelling appear to constitute, in common with the Hibbitt case, starting afresh rather than conversion. Although the previous appeal for the site was allowed, this decision pre-dates the Hibbitt judgement. I consider that I have insufficient technical information to be certain that additional structural works would not be required. The proposed works would therefore not comply with Class Q of Part 3 of Schedule 2 of the GPDO.

Conclusions

18. The appellant was not notified within the statutory period and had the proposal constituted permitted development, work could have commenced. However, for the reasons stated above, I consider that the works required to provide a dwelling on this site using the existing barn would go beyond those which are within Class Q of the GDPO.
19. For the reasons given the appeal is dismissed.

E Symmons

INSPECTOR

³ 18/02106/CPRIOR.

⁴ 18/02126/CPRIOR.

⁵ 19/00355/CPRIOR.

⁶ 19/00516/CPRIOR

⁷ APP/C3240/W/17/3181573.