



Appeal Decision

Site visit made on 2 July 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Appeal Ref: APP/Y3940/W/19/3221626

Land at Back Lane, Cold Harbour, Great Hinton, Wiltshire BA14 6BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 3, Class Q of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs Martin and Elizabeth Tyler against the decision of Wiltshire Council.
 - The application Ref 18/08683/PNCOU, dated 6 September 2018, was refused by notice dated 30 October 2018.
 - The development proposed is change of use of agricultural building into a dwelling (Use Class C3) with associated curtilage and for associated operational development.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal, the appellants requested that I accept a revised block plan which would alter the proposed relationship of the development with the highway. The Council did not comment on this matter. However, the revised plan serves to clarify that the development would be accessed via the existing track and the proposal would otherwise remain unchanged. As such I am satisfied that no party would be prejudiced by my acceptance of the plan and I have determined the appeal on that basis.

Background and Main Issues

3. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) provides that development is classed as permitted development if certain criteria are met. Schedule 2, Part 3, Class Q of the GPDO makes provision for (a) the 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); and (b) building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of that Schedule.
4. The permitted development right is subject to a number of criteria set out in paragraph Q.1 and to conditions in paragraph Q.2. The conditions set out circumstances in which an application to the local planning authority for the determination as to whether prior approval for certain matters will be required.

5. The proposed development would involve both a change of use and building operations. The Council's refusal notice sets out that, in its view, the building is not capable of conversion without significant building operation works being undertaken that would go beyond what would be reasonably necessary to do so. As such it is contended the proposal would not be permitted development.
6. Notwithstanding the above, the Council nonetheless also proceeded to consider whether prior approval would be required and should be given with respect to the matters set out in paragraph Q.2. On that basis, the application was also refused prior approval under Q.2.(1) (a) because, in the Council's view, insufficient evidence to enable an assessment to be made of the transport and highways impacts of the development had been provided.
7. In other respects, the Council does not dispute that the proposal would comply with paragraphs Q.1.(a) to (h) and (j) to (m) and the Conditions set out in Q.2.(1) (b) to (f). I see no reason to disagree and therefore proceed on that basis.
8. Accordingly, taking into account the above, the main issues are:
 - Whether the proposal would be permitted development under the provisions of Class Q of the GPDO, having particular regard to whether the extent of the works would consist of building operations reasonably necessary for the building to function as a dwellinghouse; and
 - If the proposal is permitted development under the provisions of Class Q, whether prior approval should be given having regard to transport and highway impacts.

Reasons

Whether permitted development

9. The Council's refusal notice refers to non-compliance with Q.1.(i) in terms of the extent of building operations proposed. Development is not permitted under this Part 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.
10. The appeal building is a three-bay concrete-portal framed barn, essentially comprising an open structure up to eaves level, with a roof supported on eight concrete posts. The roof covering is corrugated sheeting which also serves as cladding to triangular apexes on the end elevations. The floor is unmade and laid to earth with some hardcore evident and at the time of my visit the barn was being used to store hay bales.
11. The Planning Practice Guidance (PPG) states that permitted development rights under Class Q assume the existing building is capable of functioning as a dwelling. Furthermore, whilst a range of building operations which are reasonably necessary for the conversion of the building to function as a dwellinghouse are permitted, it is not the intention of the right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.

12. The main parties disagree over whether the building is structurally capable of supporting the additional load required to convert the building to a dwelling. However, the application was accompanied by a structural report¹ confirming the building is a longstanding structure, showing no signs of significant decay or deformation. The report also concluded that the building is of a type of construction which, in the judgement of the author, would not require underpinning or enhancement of the foundations in order to enable conversion to residential use. I appreciate the Council is concerned that the report alludes to the desirability of introducing localised cross-bracing. Nevertheless, the evidence does not appear to suggest that such works would be necessary in order to provide the required structural integrity for the proposed conversion.
13. Whilst the report did not include structural calculations or appear to be informed by ground investigations, it was prepared by a suitably qualified and experienced professional and I have no good reason to doubt its veracity. Accordingly, I am satisfied that, in the absence of evidence to the contrary, the building would not require structural works to enable the building to be converted.
14. That is not, however, determinative of whether the existing building is capable of functioning as a dwelling or would be 'suitable for conversion' as set out in the PPG.
15. As I saw on my site visit, the building is skeletal, being open to the elements on all four sides. Significant building works would be required to form the exterior walls and the creation of doors and windows at ground and first floor levels where none currently exist. In addition, a solid floor would need to be installed and (subject to comments below) the roof covering would be replaced.
16. The proposed works all fall within the scope of those identified as being permissible under the PPG and paragraph Q.1 (i). However, the parties have referred to the *Hibbitt*² judgement, as does the PPG, and in that context, whether or not the proposed works go beyond the scope of that permitted is a matter of fact and degree.
17. Having regard to all the evidence and my own observations, the extent of the works proposed in this case are extensive. The contribution of the pre-existing building to the proposed development would essentially be the concrete frame. That would, in my judgement, significantly exceed what might reasonably be considered as a conversion. In comparing the development as proposed to be constructed with that which would be retained, the works would in my view be so extensive as to amount to fresh build, rather than a conversion.
18. Whilst the appellants have indicated that the existing roof could be retained rather than be re-covered, albeit with repairs, this would not alter my overall conclusion that the extent of the works required would be extensive.
19. Similarly, I do not agree with the appellants' contention that the proposal would be acceptable in part because the absence of existing walls means no "rebuilding" would, in that regard, take place. The construction of new walls would be a building operation and, as set out above, the extent of such works

¹ 'Visual Structural Inspection of Concrete Framed Building' DSA Consulting and Civil Engineers, July 2018.

² *Hibbitt and another v Secretary of State for Communities and Local Government* (1) and *Rushcliffe Borough Council* (2) [2016] EWHC 2853 (Admin).

are required to be considered in the overall judgement. I am mindful that the *Hibbitt* judgment refers to the concept of “fresh build” in this regard.

20. For those reasons, I conclude that the works proposed would not be reasonably necessary to convert the building to a dwellinghouse under Class Q and the development is not therefore permitted by the GPDO.
21. In reaching that conclusion, I have had regard to a number of other appeal decisions from other parts of the country drawn to my attention by the appellants, including one apparently highlighted by the Council outside of the appeal process. However, those decisions serve to demonstrate the need for each case to be considered on its particular merits and I have done so here. In any event, I do not have the full details of those other cases and cannot therefore be certain that the circumstances were comparable to the appeal before me.

Prior approval

22. Given my conclusion that the building does not benefit from Class Q permitted development rights, the provisions of paragraph Q.2. are not applicable. I need not therefore consider further the likely transport and highway impacts of the proposal as these would not alter the outcome of the appeal.

Other Matters

23. I acknowledge that water and electricity services are available nearby, the site is fairly well screened by an existing hedgerow and could include landscaping. Furthermore, the Council has not raised any concerns over the appearance of the proposed development. The contribution of a net additional dwelling would also be consistent with the Government’s overall priority of significantly boosting the supply of homes. However, the above are not matters relevant to whether the proposal is permitted development.

Conclusion

24. For the reasons given, the appeal should be dismissed.

Ian Bowen

INSPECTOR