



Appeal Decision

Site visit made on 3 September 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal Ref: APP/X1118/W/19/3228101

Building at Bedport Farm, Burrington, Umberleigh, Devon EX37 9LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 G Van Den Berg against the decision of North Devon District Council.
 - The application Ref 65295, dated 19 July 2018, was refused by notice dated 21 December 2018.
 - The development proposed is described as Change of use of building and curtilage to 5 dwelling houses under Class Q. Two units will be 'large' dwellings under the definition contained within the legislation and 3 units will be 'small' dwellings.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q(a) and Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for "Change of use of building and curtilage to 5 dwelling houses under Class Q. Two units will be 'large' dwellings under the definition contained within the legislation and 3 units will be 'small' dwellings" at Building at Bedport Farm, Burrington, Umberleigh, Devon EX37 9LE in accordance with the terms of the application Ref 65295, dated 19 July 2018, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q, paragraphs Q(a) and Q(b). The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with paragraph Q.2(3) of the above Order, and subject to the following additional conditions:
 - (1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan; 200-01 Rev C, 200-02 Rev A, 200-03 Rev A, 200-04 Rev C, and 200-05 Rev B.
 - (2) Prior to first occupation of the development hereby approved, the agricultural building to the southwest of the site shall only be used for the purpose of the storage of machinery and equipment necessary to maintain the agricultural holding and shall not at any time thereafter be used for the keeping of livestock.

Procedural Matters

2. Although the description of development suggests that the application relates only to a change of use, it is clear from the appeal documents that the development includes both a change of use and building operations, as referred

to in paragraphs Q(a) and Q(b) of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I have determined the appeal on this basis.

Background and Main Issue

3. The GPDO grants planning permission for certain forms of development, including the change of use of an agricultural building to a dwelling house, provided that certain conditions, limitations and restrictions are complied with.
4. Paragraph Q.2 of Schedule 2, Part 3 of the GPDO sets out that where the development proposed is under Class Q(a) together with development under Class Q(b), development is permitted subject to an application to the local planning authority for a determination as to whether their prior approval is required in relation to the matters set out in paragraphs Q.2(1)(a) to (f). The evidence before me indicates that the Council considers that their prior approval is not required in relation to these matters.
5. Amended elevations and floorplans were submitted during determination of the original Prior Approval application. However, the garden curtilage area in the block plan was not amended and updated floor space and curtilage figures were not provided. This meant that the proposed curtilage appeared to be larger than the land area occupied by the agricultural building proposed for conversion, contrary to Schedule 2, Part 3, paragraph X of the GPDO. However, an amended block plan, drawing 200-01 Rev C, was submitted with the appeal, along with updated floor space and curtilage figures. These demonstrate that the curtilage area would be no larger than the land area occupied by the agricultural building. The Council indicates that this negates their second refusal reason. On the evidence before me, I concur and find that the development would therefore comply with Class Q(a). I have therefore determined the appeal on the basis of the amended details and will make no further reference to the second reason for refusal set out in the Council's decision notice.
6. The Council considers that the development accords with the requirements set out in paragraph Q.1 of Schedule 2, Part 3, Class Q of the GPDO with the exception of Q.1(i). There is no contrary evidence before me with respect to the requirements under (a) to (h) and (j) to (m) of paragraph Q.1. Accordingly, the main issue in this case is whether the proposal would comply with the permitted development criteria set out at Class Q.1(i) of the GPDO.

Reasons

7. Part Q(b) of Class Q allows building operations reasonably necessary to convert the building to a dwelling house. Paragraph Q.1(i) advises that such works are limited to (i) the installation or replacement of (aa) windows, doors, roofs and exterior walls to the extent reasonably necessary for the building to function as a dwelling house and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).
8. Housing poultry and including a sorting, packing and storage area, the existing pitched roof agricultural building is substantial. It comprises a timber framed structure with intermediate posts internally and a taller steel portal framed addition, separated by a block wall. The building is substantially enclosed on all sides, with full height walls comprising full height steel cladding and a lower

- section of blockwork with timber cladding above, a concrete floor, and profiled steel sheet roofing.
9. The development would involve various building operations. Amongst other aspects, this would include: rendering of existing blockwork and replacing the top third of the timber walls with zinc; internally insulating walls with infill panelling, and creating new window and door openings; adding insulation to the underside of the roof; creating a new first floor element in unit 5; demolishing part of the timber framed structure to provide separation between units 1-4 and unit 5, and erecting a new external wall to provide the gable end of units 3 and 4; and creating new walls within the envelope of the timber structure to separate units 1-4. However, the metal cladding on the steel frame structure and the lower block walls and the majority of the timber cladding on the timber framed structure would remain, as would the existing roof, subject to repair/replacement as necessary.
 10. The Planning Practice Guidance (PPG) advises at paragraph 105 that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. It also clarifies that 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 therefore states that it is only when the existing building is already suitable for conversion that it would be considered to have the permitted development right.
 11. No guidance is provided as to what 'reasonably necessary' may mean. However, development is only permitted under Class Q 'to convert the building' and it seems to me that this means the building needs to be sufficiently structurally sound and substantially built to be capable of accommodating the works proposed without needing to be rebuilt. The building operations required should therefore not be so extensive so as to amount to rebuilding or new build. The difference between conversions and rebuilding is discussed in the case of *Hibbitt vs Secretary of State for Communities and Local Government*¹, to which I have had regard. However, unlike the barn in the Hibbitt case, the appeal building has fully clad external walls on all sides and cannot be considered to be a skeletal structure.
 12. The evidence before me, including the Schedule of Works and a new Structural Inspection report submitted with the appeal and which provides details on loadings, indicates that the main timber and steel framed structures are structurally sound. With the exception of partial demolition of the timber structure that joins the steel structure, the existing building would remain. The remaining structures would be sufficient to provide the main loadbearing element for the dwellings on the existing foundations, and no new structural elements to the external fabric of the building would be required. I see no reason to doubt the findings of the schedule of works and the structural report, and find that they provide sufficient information in terms of structural matters.
 13. A new gable end external wall to units 3 and 4 would be needed to enclose those units following the partial demolition of the timber frame structure. Although internal works are not generally classed as development, the walls dividing units 1-4 could also be considered to be external rather than internal works given their role in separating the units. However, the GPDO does allow

¹ [2016] EWHC 2853 (Admin).

for the installation of external walls, and the Schedule of Works sets out that the new gable end wall would be supported by the existing structure and the walls dividing units 1-4 would provide additional stability to the building. The evidence before me indicates that the existing timber structure and its intermediate posts would also be structurally sufficient for the new walls. In this case, the main structure of the building and its existing outer walls would remain and would provide the main external and structural elements of the units. The new walls would not be significant in relation to the enduring structure, nor equate to significant new structural elements. It seems to me that, in this case, the erection of a gable end wall and dividing walls within the building structure to sub-divide it into five dwellinghouses, which the GPDO does not exclude, would not amount to a rebuild or new build.

14. The proposed conversion would involve various building operations. However, these are permitted under Class Q.1(i) to the extent that they are reasonably necessary to allow the conversion of the building to function as a dwelling house. From the evidence before me and from my observations on my site visit, it seems to me that the existing building is sufficiently substantial to be capable of accommodating the proposed works. The new walls would simply delineate each unit and do not of themselves indicate that the building is unsuitable for conversion to residential use. Given the building's substantial form, the building operations could not be reasonably described as starting afresh and would not be so extensive so as to amount to a complete or substantial re-build or new build. The appeal proposal would therefore involve building operations to the extent reasonably necessary for the building to function as a dwellinghouse.
15. My attention has been drawn to various appeal decisions involving conversion of agricultural buildings to dwellinghouses, including in particular the appeal decision Ref APP/E2001/W/18/3199201 and the Council's correspondence with the appellant in relation to that decision. However, as I do not have full details before me of that scheme or the others, I cannot determine whether the circumstances are analogous to the appeal proposal. Notwithstanding this, the evidence before me indicates that the above appeal decision related to the proposed use of part of an agricultural building for residential use with the other part remaining in agricultural use. Given this appeal proposal involves conversion of the entire building, it seems to me that they are not particularly comparable. I have therefore determined the appeal proposal on its merits and on the evidence before me.
16. For the above reasons, I conclude that the building operations would be reasonably necessary for the building to function as a dwellinghouse. Consequently, I find that the proposal would comply with the permitted development criteria set out at Class Q.1(i) of the GPDO.

Other matters

17. Neighbours and the Parish Council have raised concerns in relation to highway considerations and construction disturbance, water supply, rainwater run-off and waste water. However, I have little substantive evidence that the proposed development would harm highway safety and have no reason to doubt the Council's findings in respect to the transport and highway impacts of the development. I recognise that construction works may cause some disturbance, but this would be for a limited period. It seems to me that the

existing agricultural use is, in any event, likely to involve various vehicle movements, including some large vehicles, and that maintenance requirements of the lane would not be particularly different from the existing situation.

18. The other matters are not relevant Prior Approval considerations. However, the evidence before me indicates that: water supply for the dwellinghouses could be provided by the existing supply serving the agricultural use and there is little evidence before me that water demand would be significantly greater for a residential use; there would be no additional rainwater run-off given the existing building would be utilised and not expanded; and waste water matters would be covered by for example building regulations, environmental permitting and, as relevant, the Environment Agency's General Binding Rules for small sewage disposal systems.

Conclusion and Conditions

19. For the above reasons, I conclude that the appeal should be allowed and prior approval is deemed to be granted.
20. Any planning permission granted for the change of use of agricultural buildings to dwellinghouses under Article 3(1) and Schedule 2, Part 3, Class Q(a) and Q(b) of the GPDO is subject to the condition Q.2(3) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date. Paragraph W(13) of Part 3 of Schedule 2 of the GPDO allows the granting of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. Given amended plans were submitted during and after the Council's determination of the application, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. The Council also suggested conditions relating to land contamination and restricting the use of the adjacent agricultural building immediately to the south-west of the appeal site.
21. I have not imposed the contamination conditions because I have little substantive evidence that the site could be contaminated and the Council's Officer Report states that there are no known objections with regard to contamination. Conditions relating to land contamination are therefore neither necessary nor reasonable. Given its proximity to the appeal site and the potential for certain uses of the nearby agricultural building – which is within the control of the appellants – to create undesirable living conditions for occupiers of the proposed residential units, I find that this condition is necessary and reasonable. However, I have amended the condition to ensure that it complies with the tests in the National Planning Policy Framework and the advice in the PPG regarding conditions.

Tobias Gethin

INSPECTOR