
Appeal Decision

Site visit made on 25 September 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2019

Appeal Ref: APP/E2001/W/19/3232837

Ings Lane Nurseries, Ings Lane, Ellerker HU15 2DW

- 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 Ings Lane Nurseries against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/00824/AGRNOT, dated 8 March 2019, was refused by notice dated 28 May 2019.
 - The development proposed is described as 'conversion of a vacant barn into a residential dwelling'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the postcode of the appeal site's address from the appeal form. The postcode is stated incorrectly on the planning application form. The postcode I have used is also as it is shown on the Council's decision notice and appears to relate to the appeal site on the ground. I have proceeded on this basis.

Main Issues

3. There are two main issues. These are a) whether the proposed development would consist of building operations other than the installation 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 dwelling house; and b) whether the curtilage for the proposed dwelling would cover an area greater than that of the building to which it would relate.

Reasons

Physical Works

4. The appeal building is a detached rectangular structure with a pitched roof. It is formed of a metal framework set into concrete. The frame also comprises horizontal timber beams. Concrete blockwork forms the lower part of the walls which, for the remaining part, are single width corrugated metal sheet, a material which also forms the roof covering. The building is open inside and

- has a roller shutter door on one of the gable elevations. At the time of my visit, the building contained some equipment although was mostly empty.
5. Some building works are allowed under the change to residential use permitted by Class Q. Further guidance on this matter is set out by paragraph 105 of Planning Practice Guidance (PPG).
 6. The right essentially assumes that the agricultural building is capable of functioning as a dwelling. It permits building operations which are reasonably necessary to convert the building, which may include those which would affect its external appearance and would otherwise require planning permission. These can include those listed above. It is not the intention of Class Q to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. 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. With this in mind, the rights allow for a scope of building works that has an implicit limitation.
 7. The appellant states that the foundations, the floor slab, the frame, the blockwork and the roof purlins will be retained. Physical works proposed as part of the change of use in this case would comprise new walls above said blockwork and a new roof. Part of the gable elevation that currently contains the roller shutter door would be removed, glazed and set in from its existing location. This arrangement would continue round to one side. There would be a balcony formed on the aforementioned gable end. Other works including further new walls and a first floor would be internal.
 8. In order to facilitate the change of use proposed, the building would be stripped back to what is essentially a skeletal form. That being a metal frame with blockwork to its lower sections. Whilst this blockwork would be retained, it forms a contextually small percentage of each wall. In effect, more wall would be new than there is existing. A matter which would be exacerbated by the complete removal of existing blockwork to form the new glazed facades on a gable and part of a side elevation. There would be an entirely new roof covering. The metal frame would form the main structure which I have no reason to doubt could support the works but this is a small part of what would make up the eventual dwelling. The substantial amount of new façade which would be in an entirely new position and have a raised balcony above it would form a not insignificant proportion of the building's eventual shape which would not reflect the existing.
 9. I acknowledge that the nature of the works that would be undertaken to the building are listed in PPG and Class Q as being permitted. Noting as I do that it is possible for the external appearance to change. However, that is not necessarily to mean that if all of that which is allowed is carried out it would not amount to something more than that which would be acceptable. In this case, it is the amount and scale of new building work when taken together which, for me, takes this project out of a conversion and into too much rebuild to make it into a dwelling. The eventual dwelling would be more akin to one built that happens to incorporate elements of a previous structure rather than a building that is in the main being used as the eventual dwelling.

10. I am reminded of the Hibbitt case¹ in the submissions from both main parties and whilst I could not say conclusively the scheme in that case was the same as the one before me, the findings set out that the difference between a conversion and a rebuild is a matter of legitimate planning judgment as to where the line is drawn. Based on the evidence before me in this case, I have exercised such a judgement.

Curtilage

11. The Council resisted the notification for the appeal scheme on the basis that the curtilage afforded to the dwelling would exceed that permitted by the Order². The appellant then provided a revised plan which seems to fall within the prescribed tolerances for a curtilage. The Council set out in their evidence that there is no provision in the Order that allows revised information to be submitted during the period of time that it is deposited with them. Hence this reason for refusal.
12. I am directed to Paragraph X of Part 3 which sets out the definition of a curtilage for the purposes of Class Q which is described as 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 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.
13. Turning to the procedure for the submission of notifications for prior approval under Part 3 as set out by paragraph W, I note that sub paragraph 9 states that the local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include assessments of impacts or risks, statements setting out how such would be mitigated or details of proposed building operations.
14. Firstly, with regard to sub paragraphs 9 and other parts of paragraph W I cannot see that such information should be submitted at the outset. I.e. on submission to the Council. Indeed, the mitigation of a risk may arise from Council consultees expressing concern about it. The submission of information would then naturally have to follow, obviously within the prescribed life of the notification. Secondly, the list set out by sub paragraph 9 is preceded by the words 'may include' which suggests to me that it is not closed and could reasonably therefore include other things. Such as, in this case, a plan showing a curtilage that would sit squarely with the requirements of the Order.
15. The main parties appear to agree that the revised plan showing the reduced curtilage was submitted within the life of the notification and again with the appeal documentation. It has therefore been available for inspection by any interested parties. With this, my above findings and the principles of fairness in mind, I do not feel that anyone would be prejudiced by my acceptance of the revised plan as demonstration that an acceptable curtilage could be achieved.

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

² Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

Other Matters

16. The evidence from both main parties makes reference to appeals allowed for the change of use of agricultural buildings to dwellings under Class Q. These were in Leeds³, Ramsbottom⁴ and Oakamoor⁵. In each case, my colleagues found that the works proposed would not amount to such that would be so extensive that they were not permissible by the Order.
17. In the Leeds case, I note that all roof and wall materials were to be retained and the scheme did not include any extension of the building. The Ramsbottom case refers to similar matters as well as, in the case of physical works, certain matters being common ground between the main parties. The Oakamoor case refers to external material being retained and the building being internally insulated as well as works amounting to improving weather tightness. Whilst I have not been exhaustive here on the findings of each case, it strikes me having seen the proposed plans and my colleagues' reasoning in each case that they do not bear sufficient similarities with the appeal scheme to the extent that I would be minded to allow the appeal in their light. In any case I refer back to the findings in Hibbitt concerning the extent of works being a matter of legitimate planning judgement.

Conclusion

18. Whilst I have found in favour of the appellant in regard to the second main issue my findings in respect of the first remain. It is for those reasons that the appeal scheme would not comply with the description of permitted development as it is set out by Class Q, of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The appeal is therefore dismissed.

John Morrison

INSPECTOR

³ APP/N4720/W/19/3219850 Land adjacent to Wheatfields, Tithe Barn Lane, Bardsey, Leeds

⁴ APP/T4210/W/17/3182611 Lower Dickfield Farm, Lower Dickfield, Helmshore Road, Ramsbottom

⁵ APP/B3438/W/18/3202031 Hayes Gate Farm, Star Bank, Oakamoor, Staffordshire