



Appeal Decision

Site visit made on 1 October 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref: APP/R0660/W/19/3233514

Barn, Off Stock Lane, Wybunbury CW5 7EX

- 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 and Mrs P and C Sherratt against the decision of Cheshire East Council.
 - The application Ref 19/2439N, dated 20 May 2019, was refused by notice dated 12 July 2019.
 - The development proposed is a change of use of agricultural building to dwelling.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of agricultural building to dwelling at the barn, off Stock Lane, Wybunbury CW5 7EX in accordance with the terms of the application Ref 19/2439N, dated 20 May 2019, subject to the following conditions:
 1. (a) Any soil or soil forming materials to be brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation to site.

(b) Prior to first occupation, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority.
 2. If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme approved in writing by the Local Planning Authority. Prior to first occupation of the development, confirmation should be provided to the Local Planning Authority that no such contamination was found, and if so what remedial measures were approved and implemented.

Procedural Matters

2. The planning application form does not contain a description of development. However, the development proposed is clear from the plans, the Planning

Statement and part E of the appeal form. However, I have used the description of development set out on the decision notice as this best reflects the scheme that the Council considered, and which now forms part of the appeal.

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for certain forms of development, including the change of use of an agricultural building to a dwelling house, together with building operations reasonably necessary to convert the building to that use, provided that certain conditions, limitations and restrictions are complied with.
4. The Council has refused the application on the basis that it does not accord with the limitations and restrictions contained within Classes Q(a) and Q(b) of Part 3 of Schedule 2 of the GPDO. Development permitted under Class Q is also subject to the condition that before commencement, an application must be made to determine whether prior approval is required in respect of the matters referred to in (a)-(f) of paragraph Q.2(1). The Council does not raise concern with the conditions of paragraph Q.2(1) of the GPDO other than transport and highways impact of the development. From the evidence before me, I agree.
5. The Council also considers that the curtilage to the building would be contrary to the definition of "curtilage" set out in paragraph X of the GPDO, insofar as the curtilage area would exceed the area on which the building is sited.

Main Issues

6. The main issues are: (i) whether the proposed development would satisfy the term curtilage; (ii) whether the development would be permitted development for the purposes of the Order, having regard to the limitations listed in paragraph Q.1 of Class Q, with particular regard to building operations; and (iii) the effect of the development on transport and highway matters.

Reasons

Curtilage

7. The curtilage shown on the plans is around the proposed dwelling. Hence, it is closely related even if it is unenclosed. In total, the site edged red amounts to 175.5m². Using the figures from the Officers Report, the building has an external measurement of 88.2m². This means that the curtilage area would be 87.3m², which would not be larger than the land area occupied by the building.

Permitted development

8. The appeal building is constructed from a timber frame, with a dwarf brick wall to the front elevation, dwarf block walls to either gable elevation and a block wall to the rear elevation. Timber cladding is used for the front and gable elevations. The building's timber structure supports a dual pitched roof comprising of asbestos sheets. Windows can be found in the front and rear elevations and the gable elevation facing to the south-west. There is a double timber door in the front elevation. Inside, there is a concrete floor slab, a series of dwarf brick walls and enclosures used to sub-divide the building into pens. Two open sided timber buildings with metal sheeted roofs adjoin the building. One would be removed as part of the scheme, the other partially demolished.
9. The Planning Practice Guidance (the Guidance) explains that the right, under Class Q, *"assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are reasonably necessary*

to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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. 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 (Paragraph: 105 Reference ID: 13-105-20180615)."

10. The GPDO does not make a distinction between structural and non-structural works, and it places no restriction on whether works are structural or not. Even so, it was held in *Hibbitt v SSCLG [2016] EWHC 2853* that the building must be capable of conversion to residential use without new structural elements, and that the existing building should be sufficiently strong enough to bear the loading from the external works.
11. The appellant's Structural Report and Supplementary Report jointly explain that the building's foundation are shallow at around 400 mm deep and seated onto sand. There is no settlement on the external walling, or any deflection of the trusses, which sit onto timber posts in the wall structure. Thus, the foundation to the wall posts, whilst shallow, are adequate. The trusses are of a light eight frame design, but they have already been carrying the existing roof's loading. Structural calculations have been provided for the truss showing that they could carry the tiling that would replace the existing asbestos sheet roof.
12. While the trusses are adequate, and the diagonal members from each truss provide the necessary lateral resistance to the inner face of the wall posts, the purlins are slightly underside. These would be strengthened with steel fitch plates at the trusses. However, the Supplementary Report concludes that the building is structurally stable with adequate foundations and no requirement for underpinning. Furthermore, the existing trusses are sufficient for the new slate cladding and the support posts, built into the outer walls, are in good condition.
13. The proposed windows and doors; render to the side elevations; drainage and treatment plant for the foul water; and the new electric supply would all be building operations as set out in paragraph Q.1(i). The same would apply to the demolition of the existing buildings insofar as paragraph Q.1(ii). The Guidance (Paragraph: 105 Reference ID: 13-105-20180615) and Section 55(2) of the Town and Country Planning Act 1990 are clear that internal works are not generally development and are not prohibited by Class Q. Hence, the new timber-framed inner leaf to allow the building to be insulated and the new ground floor slab which would be constructed over the existing ground slab would be internal works.
14. Despite the Council's concerns about the totality of the works, many are building operations listed within paragraph Q.1(i) and others are internal works. The Council offer no substantive evidence which challenges the appellants structural evidence. I do not consider that the proposals go above and beyond what is reasonably necessary to convert the building into a dwellinghouse as the building is capable of conversion.

15. For these reasons, I conclude in respect of this issue, that the development would be permitted development for the purposes of the Order, having regard to the limitations listed in paragraph Q.1 of Class Q.

Transport and highway matters

16. There is an existing gated access leading from Stock Lane to the building. Although the access is not hard surfaced, it is straight and across relatively flat ground. I understand that the access would be retained as the appellants consider that it has proved stable enough to facilitate access all year round. I have no reason to doubt this experience given that it already provides access to the building. On this basis, it is the appellants view that there would not be a material change of use of this land. This is not a point that the Council dispute.
17. A previous application may have included amendments to the access onto Stock Lane, but in terms of the scheme that is before me, parking could be accommodated within the curtilage and I consider that the use of the access would not result in a significant increase in vehicles and there would not be an adverse effect on highway safety. The appellants are also clear that any improvements to the site entrance may be the subject of a separate planning application and highways agreement. This would be the appropriate point to consider whether visibility improvements are needed at the access.
18. I conclude, on this issue, that this application would not have unacceptable transport and highways impacts.

Other matters

19. Even if the site is outside the village settlement boundary and in the countryside or within a Green Gap, planning policies may only be relevant in prior approval cases when they relate to the matters in paragraph Q.2(1) of the GPDO. I note comments about the building's history and whether planning permission has been obtained, but there is no substantive evidence before me to counter the building's use for agricultural purposes.

Conclusion and Conditions

20. For the reasons set out above, I conclude that the proposal satisfies the requirements of the GPDO for change of use from an agricultural building to a dwelling, as set out under Schedule 2, Part 3, Class Q, both with regard to being permitted development and also meeting the prior approval conditions. Therefore, the appeal should be allowed and prior approval is granted.
21. The GPDO requires at Part 3 paragraph W(12)(a) that the development shall be carried out in accordance with the details approved by the local planning authority. As paragraph Q.2(3) stipulates that development shall be completed within a period of three years, a condition is not required in this regard.
22. Paragraph W(13) of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. I have considered the two conditions suggested by the Council and agree that they are necessary given the sensitive end use of the building and the agricultural history of the site and its immediate surroundings.

Andrew McGlone

INSPECTOR