
Appeal Decisions

Site visit made on 17 September 2019

by Mr K L Williams, BA, MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 October 2019

Appeal A: APP/D3505/W/18/3216597

Ash Street, Semer, IP7 6QZ

- 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 1, Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr P Bulgin against the decision of Babergh District Council.
- The application, ref: DC/17/05559 and dated 9 October 2017, was refused by notice dated 21 May 2018.
- The development proposed is the conversion of a barn to a dwelling.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/D3505/X/18/3216598

Ash Street, Semer, IP7 6QZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr P Bulgin against the decision of Babergh District Council.
- The application Ref: DC/18/03284/LCP and dated 17 July 2018, was refused by notice dated 13 September 2018.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the conversion of an agricultural barn to a dwellinghouse.

Summary of Decision: The appeal is dismissed.

Main Issues

1. The main issue in Appeal A is whether the proposed conversion would be permitted development not requiring an application for planning permission. The main issue in Appeal B is whether the Council's decision to refuse to issue a lawful development certificate (LDC) was well-founded.

Reasons

2. The site is in the countryside, outside the village of Semer. Ash Street Farm extends to about 8 hectares. A site plan shows the barn and a small amenity and parking area adjacent to it. Drawing D2000 Rev 06 provides elevations and floor plans. The barn is steel framed, with 3 bays and predominantly open sides. It is thought to have been erected in the 1950's.

3. Part 3, Class Q of Schedule 2 of the Town and Country Planning General Permitted Development Order, 2015 (GPDO) provides that the change of use of a building from an agricultural building to a dwellinghouse is permitted development. The permitted development also includes building operations reasonably necessary to convert the building to a dwellinghouse. Part 3W concerns the procedure for applications for prior approval. Part 3W (11) (c) sets out that development must not begin before the expiry of 56 days following the date of an application being received without the authority notifying the applicant whether prior approval is given or refused.
4. The appellant contends that the Council failed to issue a decision within the 56-day period so that the proposed conversion to a barn would be lawful. An application for notification of prior approval for conversion of the barn was dated 9 October 2017 and was accepted by the Council as valid on 10 November 2017 (DC/17/05559). The Council issued a notice of approval on 21 December 2017. However, the Council's decision was the subject of a judicial review and was quashed by order of the High Court dated 29 March 2018. Notwithstanding that quashing, the appellant considers that the application made in November 2017 remained in place. On 21 May 2018 the Council issued a further decision, a notice of refusal. However, that decision was issued beyond a period of 56 days from the making of the application.
5. The appellant's position on this matter is not supported by relevant case law in *R (on application of Berkshire Assets (West London) Limited) v London Borough of Hounslow* [2018] EWHC 2896 (Admin). In that case, the Council's decisions to refuse applications for prior approval were made within 56 days but were later found to be unlawful. The submission that in those circumstances the development could then lawfully begin was rejected. The same conclusion is reached in this case.
6. The appellant acknowledges that some works to the building were carried out before the submission of the prior approval application DC/17/05559. A precise date for those works is not provided. Those works include the provision of steel bracing members to the structure. They can be seen on the side elevations of the building and in the gable end. There was also the bracing of the column heads. In addition, a brick plinth wall has been erected. It extends along both side elevations and along the building's back wall. When I visited, the wall was of varying height, extending up to about a metre in places. A photograph submitted with application DC/17/05559 shows that it was lower at that time. The appellant says that bracing of the building was recommended in a Structural Engineer's report of 7 August 2017. It is also said that the brick plinth wall was necessary because it was intended to store animal feed and keep livestock in the building.
7. Photographs taken from the Council's planning portal in association with an earlier prior approval application, made in October 2016, are submitted by Semer Parish Council. Photographs date stamped 14 October 2016 do not show the bracing or the brick plinth. The building was inspected by Mr D Banks, a Civil Engineer, on 18 July 2017. His subsequent letter, of 7 August 2017, refers to a low brick wall around both sides and one end and to bracing to each side of the barn. It appears that the works were carried out between those dates. Photographs said to be from December 2017 also show the works in place.

8. Section 55(2) of the Act as amended provides that certain operations shall not be taken to involve development. They include operations which affect only the interior of a building or do not materially affect the external appearance of the building. The appellant contends that the works carried out before application DC/17/05559 was made fall into these categories and should not be regarded as development. Prior to the bracing and brick plinth works the barn was almost skeletal in form and a predominantly open sided structure. The bracing and the plinth wall are on the side and end walls rather than within the building. They do not affect only the interior of the building. These are not *de-minis* works. They also appear as significant additions when seen from outside the building. They materially affect the external appearance of the building and amount to development.
9. Class A of Part 6 of Schedule 2 of the GPDO provides permitted development rights for some types of development which is reasonably necessary for the purposes of agriculture. In respect of units of 5 hectares Class A(a) this includes works for the erection, extension or alteration of a building within the agricultural unit. The construction of the brick plinth and the provision of the bracing are alterations to the agricultural building. Consideration is required of whether that development was authorised. Under paragraph Q.1 (g) development is not permitted under Class Q if any development under Class A(a) has been carried out on the agricultural unit since 20th March 2013. It follows that if, as the appellant contends, the plinth wall was built for agricultural purposes then the proposed conversion would not be permitted development under Class Q. The bracing works would have the same effect if they were carried out for agricultural purposes.
10. I have also considered the position if, in fact, the bracing works and construction of the brick wall were carried out as part of the proposed conversion. There is evidence to support this position. In a statement supporting application DC/17/05559 the appellant sets out the necessary operations for the proposed conversion. Reference is made to the Council's earlier view that conversion could not be achieved without significant rebuilding. Mr Bank's letter, of 7 August 2017, had referred to some distortion of the barn structure over the years. There had then been a re-assessment leading to structural works being recommended, including the bracing to the sides and column heads and construction of the wall. These works were carried out to provide support to the building. A new insulated skin was to be provided beneath the existing eaves and overlaid with horizontal panelling. The panels would be supported by the reinforced frame and placed above the brick plinth. Fenestration would be designed to avoid an overly domestic appearance and the roof would be of profiled sheeting. This description appears to confirm that the bracing and brick plinth works are integral parts of the proposed conversion scheme. In respect of the brick plinth, that conclusion is also consistent with drawing D2000 Rev 6. It shows a brick plinth on the proposed side and end elevations.
11. The effect of Class Q2 (1) is that prior approval cannot be granted where a proposed development has begun. The carrying out of works which were integral to the proposed conversion before that approval would preclude it from being permitted development under Class Q.
12. Under Class Q.1 (i) development is not permitted under Class Q if it would consist of building operations other than those specified. They include the

installation or replacement of windows, doors, roofs or exterior walls and the provision of water, drainage, electricity gas or other services to the extent necessary for the building to function as a dwellinghouse. Planning Practice Guidance (PPG) explains that Class Q permitted development rights assume that an agricultural building is capable of functioning as a dwelling. Guidance is provided on building operations which are reasonably necessary to convert a building. It is said 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.*" The guidance goes on to say that: "*For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted..*".

13. It is consistent with relevant case law in *Hibbitt and another v Secretary of State for Communities and Local Government and another* [2016] EWHC 2853 (*Admin*) that the question of where the line is drawn between conversion and re-building is a matter of legitimate planning judgement. In this case, the need for structural bracing and support works to the external walls of the building results in the proposal going beyond the works specified in Class Q.1 (i) and in the PPG. The proposal would require some re-building rather than being limited to a conversion of the barn to a dwellinghouse.

Conclusion

14. Having regard to the above and to all other matters raised Appeal A should not succeed. In respect of Appeal B it is concluded that the Council's decision not to issue an LDC was well-founded. Appeal B should not succeed.

Formal Decisions

Appeal A: APP/D3505/W/18/3216597

15. The appeal is dismissed.

Appeal B: APP/D3505/X/18/3216598

16. The appeal is dismissed.

K Williams

INSPECTOR