



Appeal Decision

Site visit made on 29 October 2019

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2019

Appeal Ref: APP/R0660/W/19/3234900

Agricultural Storage Building at Trouthall Nurseries, Trouthall Lane, Plumley, Cheshire WA16 0UN

- 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, Paragraph Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Peter Hulse against the decision of Cheshire East Council.
 - The application Ref 18/6366M, undated, was refused by notice dated 20 February 2019.
 - The development proposed is to convert the existing building to 1 no. three bedroom residential dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The particulars of development on the Council's decision notice refers to a proposed change of use of an agricultural building to a dwelling house. However, the Council officer's report includes an assessment of the associated building operations, these also form part of the Council's reasons for refusal. Furthermore, the appellant's application form and supporting documentation refer to the associated operational development. I shall therefore consider the appeal as comprising of the change of use and for associated operational development, having regard to Class Q part (a) and (b).
3. There is no dispute between the parties that the proposal complies with the requirements set out in paragraph Q.1. parts (a) to Q.1.(h), and parts (j) to (m) inclusive. Accordingly, I shall confine my detailed consideration to the remaining Q.1. part (i), and paragraph X of part 3, schedule 2 in relation to the curtilage of the site.
4. Amended plans were submitted with the appeal in relation to the curtilage of the building. It is not clear that the amended plans have been subject to consultation and as such I cannot be satisfied that no party's case in the appeal would be prejudiced by my consideration of them. I have therefore determined the appeal on the basis of the plans upon which the Council made its decision.

Main Issue

5. The main issue in this case is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO),

with regard to the curtilage of the building and the associated operational development.

Reasons

Curtilage of the Building

6. Class Q(a) relates to the change of use, 'of a building and any land within its curtilage'. Paragraph X of part 3, schedule 2 explains that 'Curtilage' means, for the purposes of Class Q, '(a) 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 (b) 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.'
7. In this case the application was submitted with a location plan (drawing no. 942 L05) identifying building and the land proposed to fall within its curtilage, and proposed site plan (drawing no. 942 201 Rev C) showing the curtilage includes land around the building to the southwest and southeast, as well as the access up to Trouthall Lane, providing 2 car parking spaces and a patio adjacent to the southwest facing side of the building. The Council states that the area occupied by the building is 156sq.m, and the proposed curtilage is 228sq.m. However, the appellant states that building is 161sq.m. Even if I were to accept the appellant's figure, the curtilage would be significantly greater than the area of the building, exceeding the allowance provided in paragraph X of Part 3, Schedule 2. Therefore, the details submitted with the application fails to meet this specific requirement of Class Q (a) and the proposed development does not benefit from deemed consent granted by the GPDO.

Associated Operational Development

8. The building is of steel portal-framed construction, with a concrete floor. The external surfaces consist of profiled metal cladding. The roof and elevations show some signs of weathering and deterioration, although reasonable condition for its current use which is for the storage of agricultural tools, machinery and associated equipment.
9. Class Q permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order¹ and any building operations reasonably necessary to convert the building.
10. Paragraph Q.1.(i) (i) places restrictions on the building operations which can be undertaken. It states that development is not permitted 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 dwelling house; and (ii) partial demolition to the extent reasonably necessary to carry out building.
11. The submitted plans and details show that numerous operational works that are proposed to the external fabric of the building including the installation and

¹ SI 1987/764 – The Town and Country Planning (Use Classes) Order 1987, as amended.

- replacement of windows, rooflights, doors, the upgrade and repair of external roof and wall coverings where necessary, as well as the internal walls, insulating and the installation of the necessary water, drainage, electricity, gas and other services for the building to function as a dwelling house. Some partial demolition to the north eastern corner of the building is also proposed.
12. Whilst individually some of the proposed works may seem reasonable, however when considering the existing status of the building, and the works in their totality, they would have to be significant to convert the building into a habitable condition. Furthermore, the plans and supporting information submitted with the application have drawn up some inconsistencies which provide a significant degree of uncertainty on the actual amount of works proposed to the structure and external walls.
 13. I have considered the parties claims in relations to the Hibbitt case², and the advice contained in paragraph 105 of the Planning Practice Guidance (PPG), which provides further clarification. The PPG states 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. 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.'
 14. With the above in mind, the existing (drawing 942 205 Rev B) and proposed (drawing 942 202 Rev C) floor plans show the location of the steel framework. The Council officer's report identifies a discrepancy on the plans with regards to their locations, in particular relation to the positioning of the external walls of the building. This highlights that the works may be more significant than outlined in the supporting information, suggesting either the frame or the external walls are to be replaced.
 15. Furthermore, whilst the appellant's submission claims that no structural strengthening will be required, this evidence does seem to conflict with structural report submitted with the application (Ref 17016308/2.03). As well as referring to replacement roof covering, it states that the existing timber purlins supporting the roof would require strengthening. Furthermore, the additional letter (Ref 17016308/1.01) provided by the appellant's structural engineer states that the existing roof covering would now be retained, and it explains that 'the timber purlins are considered to be undersized by present day practice, however, despite this short coming are performing satisfactorily and free from significant deflection. In order to comply with current practice, it is proposed that the timber purlins be strengthened with plywood plates, screwed and glued to both sides of each purlin'. Whilst this letter is not a determinative factor, it does provide further clarification on the strengthening required to the roof structure.
 16. On the balance of probability and in the light of the Hibbert case, the works to facilitate the creation of a residential unit would be so extensive that they would go beyond what could be described as a conversion of an existing agricultural building. This conclusion is reinforced by the possibility that the steel frame or wall of the building would be altered which in turn could have a significant effect on the structural elements, and external walls of the building.

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

17. I understand that the appellant has acknowledged a discrepancy on the plans and has also provided a set of revised plans with their appeal to address the concerns raised by the Council with regards to the structure. However, as I have explained above, as these plans did not form part of the application, for the very same reasons it would not be in the best interests of fairness to all parties, and I do not consider it to be appropriate for me to accept these plans.
18. Consequently, the residential use and associated operational development to convert the building would not be permitted development under Class Q (b) because it would not satisfy the requirements of Q.1.(i) (i) of Part 3 of the GPDO. Therefore, the proposed development does not benefit from deemed consent granted by the GPDO.

Other Matters

19. I have considered the appellant's submission in relation to the various previous prior notifications approved by the Council, including that of New Road, Brereton (Ref 16/2259C) amongst others, and the various other appeal decisions referred to and appended to the submission. However, I have not been provided the full details of each case and, as such, I can attach little weight to it in my decision. In any event, I am required to reach conclusions based on the individual circumstances of this appeal.
20. In determining prior approval applications, the decision maker is required to have regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval. In the case of Class Q these matters relate to transport and highways, noise impacts, contamination, flooding, location and siting of the building, and its design and external appearance. The Council officer's report states that none of these matters required prior approval, and there is no evidence for me to disagree with this conclusion. Given that there is no dispute by the parties, no further regard to the Framework is required in this respect.
21. The appellant has provided comments on the degree of communication from the Council, that no amendments were requested, and the time taken whilst determining the application. However, these are matters between both parties and they do not affect this decision.

Conclusion

22. For the reasons given above, the appeal is dismissed.

R Cooper

INSPECTOR