



Appeal Decision

Site visit made on 7 January 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/H0928/W/19/3235718

Barn South of Maiden Way, Kirkby Thore, Penrith CA10 1XS

- 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 Addis Town Planning Ltd against the decision of Eden District Council.
 - The application Ref 19/0378, dated 30 May 2019, was refused by notice dated 26 July 2019.
 - The development proposed is described as 'conversion of an agricultural barn to the south of Maiden Way, Kirkby Thore, to a dwellinghouse (use class C3) including the retention of the walls, the steel frame, the concrete plinth, and external cladding with new materials to match as existing in design and appearance.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council amended the description of the proposal to 'Change of use of agricultural building to dwellinghouse.' This was agreed by the appellant and used in the planning appeal form. I have therefore determined the appeal on this basis.
3. I note that on the plans showing the Elevations and Sections as existing¹ and as proposed² the south west elevation is incorrectly labelled as the north west elevation. For the avoidance of doubt, I have taken this to be an error and determined the appeal on the basis of the correct label as the south west elevation.

Main Issue

4. The main issues are:
 - 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 (as amended) (GPDO), having regard to the requirements of Paragraphs Q(b) and Q.1.(i) in relation to works reasonably necessary for the building to function as a dwellinghouse; and

¹ Ref: HGKT/PBC/P/03 Rev A.

² Ref: HGKT/PBC/P/06 Rev A.

- If so, whether or not prior approval would be required in accordance with the conditions set out in paragraph Q.2(1) of the GPDO.

Reasons

Whether the proposal would be permitted development

5. Class Q of the GPDO concerns a change of use of a building and any land within its curtilage from a use as an agricultural building to a dwellinghouse. Paragraph Q(b) states that the building operations reasonably necessary to convert the building to a dwellinghouse use would be permitted development, whilst Paragraph Q.1 outlines the circumstances where development would not be permitted by Class Q. It is common ground between the parties that the proposal complies with the requirements of Paragraphs Q.1(a)-(h) and (j)-(m).
6. However, the parties disagree over whether the proposal complies with Paragraph Q.1.(i). Paragraph Q.1.(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 dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out the building operations allowed.
7. The Planning Practice Guidance (PPG) provides further clarification in this regard³. It states that the right assumes that the agricultural building is capable of functioning as a dwelling. It goes on to confirm that 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. It also explains 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.
8. The PPG also confirms that internal works are generally not development. 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 floorspace permitted, or internal walls, which are not prohibited by Class Q.
9. The Council does not dispute that the proposed building operations fall within the restricted building operations set out in Q.1 (i)(i) (aa) and (bb). However, it disagrees with the appellant that the extent of the building operations proposed are reasonably necessary for the building to function as a dwellinghouse. The appellant asserts that the works would not amount to a 'rebuild' or a 'fresh build' as too much of the original structure would be incorporated for this to be the case.

³ Paragraph: 105 Reference ID: 13-105-20180615 Revision date: 15 06 2018.

10. In my determination of the appeal I have had regard to the Hibbitt High Court Judgement⁴. This concerns a Class Q proposal and, amongst other things, considers the distinction between works required for the conversion of an existing agricultural structure or building to a dwellinghouse, and works amounting to its rebuilding or, in effect, the creation of a new building.
11. I appreciate that the Hibbitt Judgement predates the most recent advice within the PPG and that, as highlighted by the appellant, the details of the case differ in some ways to the appeal before me. However, it is still relevant in that it concluded that 'the concept of conversion has inherent limits which delineate it from a rebuild' and that 'it is a matter of legitimate planning judgment as to where the line is drawn.'
12. The appeal building is a large, partly enclosed, agricultural barn. As described in the appellant's statement of case, it consists of three distinct sections, the original being a traditional steel framed Dutch barn with a curved roof, a concrete posted barn adjacent with a pitched roof, and a lean-to structure. At the time of my site visit, part of it was being used to house cattle.
13. The Dutch barn and lean-to have roofs of corrugated metal sheeting and the adjacent concrete posted barn has a roof of asbestos cement corrugated sheeting. The Dutch barn and adjacent concrete posted barn are enclosed on the lower part on the south west, north west and part of the north east elevations by upright concrete railway sleepers which are approximately 2m in height, set into the concrete floor and rendered internally. They are enclosed on the upper part on the north west and the majority of the south west elevations by single width corrugated metal sheeting.
14. The south east elevation and the majority of the north east elevation are open to full height and small sections of the south west elevation and the north east elevation are open on the upper part. The lean-to is open on all sides. There is a concrete floor slab within the Dutch barn and adjacent concrete posted barn and a compacted hardcore floor within the timber posted lean-to. There are no subdividing elements within the barn apart from metal railings and a gate which forms an enclosure for cattle.
15. The proposal would create a two storey, three bedroomed, detached dwelling. The appeal statement declares that the works include the reuse of the concrete plinth, the existing walls and the steel framed structure, the concrete uprights and the steel frame. It is stated that it will be necessary to replace the corrugated sheeting above the plinth and on the roof as well as inserting timber infill panels between the frame along part of the north east elevation. The south east elevation will be made up of windows with some limited cladding above. New openings for windows will be inserted into the existing structure and new materials on the south west and north east elevations. A new floor will be inserted above the existing concrete floor slab and a new first floor constructed internally. It will also include modern finishing techniques to resist moisture and increase insulation. No demolition is proposed.
16. A Structural Survey accompanied the application⁵. It concludes that 'the barn is suitable to facilitate the conversion to a dwelling. Little modification may be

⁴ Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin).

⁵ Structural Survey Kingmoor Consulting Ref 19-147c001, dated 24 May 2019.

required to the existing frames and foundations and any works would allow the structure to provide additional moisture resistance and an increased level of insulation.'

17. However, in relation to the proposed scheme of works, it states that it can be assumed that there would be some minimal 'replacement of any damaged roof members' and 'limited strengthening of roof components' to ensure that the loadings from the new roof cladding can be accommodated by the existing structure. Furthermore, it proclaims that 'where required additional walls and structural support would be created using timber infill panels highly insulated to ensure compliance with the building regulations and may also provide additional barriers to resist moisture penetration.' It also declares that the 'new external infill panels would be fixed to the existing concrete and from inspection, it would appear this is suitable for fixings and to resist any additional loads from the infill panels.' No additional information has been provided in relation to the detail of the proposed works.
18. I acknowledge that any strengthening works required to the roof structure would be internal and therefore, as stated within the PPG, 'not generally development'. I also accept that Class Q, does potentially allow for substantial works. However, having regard to the evidence before me, it is not entirely clear what the full nature and extent of the proposed building operations would be. The phraseology used in the Structural Survey such as 'may', 'where required' and 'would appear' in relation to the proposed works that would be necessary to convert the building to a dwellinghouse is very broad and not definitive. In addition, the annotated plans do not fully confirm in any great detail the form and extent of the proposed works.
19. Even if I were to accept that the works were limited to what is indicated on the plans and in the appellant's statement of case, although the proposal would retain and reuse the existing 2m concrete plinth, structural frame and foundations, and retain the floor, it appears that all of the other elements of the existing barn would be new materials, albeit some to match the existing. This would include the roof; exterior walls of the south east elevation (albeit glazed) and the majority of the north east elevation; the upper part of the building of the north west and south west elevations; windows; and doors. This area makes up a substantial surface area of the building's external envelope and would mean that only the basic concrete and steel wall, frame and floor of the agricultural building would remain unchanged.
20. Consequently, considering the building as a whole and the collective extensive nature of the proposed building operations, I am of the opinion that, on balance, they would be beyond what could be considered to be reasonably necessary for the building to function as a dwellinghouse. So much so that they would, to my mind, go beyond what could reasonably be described as a conversion scheme.
21. Taking the above into account, I conclude that it has not been demonstrated that the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, having regard to the requirements of Paragraphs Q(b) and Q.1.(i) in relation to works reasonably necessary for the building to function as a dwellinghouse.

Prior approval

22. I acknowledge that the Council has raised no concerns regarding the requirements of Paragraph Q.2 (1) (a) – (f) and that the appellant considers that there is no reason why these could not be met. However, given my conclusion that the evidence before me does not establish that the proposed change of use would be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required as it would not alter the outcome of the appeal.

Other Matters

23. The appellant has drawn my attention to a recent appeal decision⁶ which he considers is directly comparable to the appeal before me, where an Inspector concluded that the proposal 'would amount to conversion of the cart shed and not re-building of it. The cart shed is capable of functioning as a dwelling following building works reasonably necessary to convert it. Therefore, it meets the requirement of Paragraph Q.1 (i)(i).' I accept that there appear to be some comparisons with this case and the appeal before me. However, I am not fully familiar with the full details of this case, and in any event, I have determined this appeal on its individual planning merits, on the basis of the submitted information and my observations on site, and with appropriate regard to legislation and Government guidance.
24. The appellant has confirmed that, should the appeal be allowed, it is highly likely that a subsequent application for planning permission for changes to the external appearance of the building would be made. This would include the cladding over of the railway sleepers with a continuation of the metal sheeting. The appellant states that the external cladding would not be necessary for the conversion though it would result in a more aesthetically pleasing and higher quality design. Be that as it may, as I have concluded that the proposal does not benefit from Class Q permitted development rights, this is not a determinative matter.

Conclusion

25. For the reasons given above, having regard to the requirements of Paragraphs Q(b) and Q.1.(i), I conclude that it has not been demonstrated that the proposal would 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.

F Cullen

INSPECTOR

⁶ Ref: APP/Z3825/W/18/3211612.