



Appeal Decision

Site visit made on 20 November 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Appeal Ref: APP/X2220/W/19/3233456

New House Farm, Church Lane, Stourmouth, Kent CT3 1HS

- 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 3, Paragraph Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO).
 - The appeal is made by Messrs Whitehead against the decision of Dover District Council.
 - The application Ref DOV/19/00070, dated 17 January 2019, was refused by notice dated 30 April 2019.
 - The development proposed is conversion of existing agricultural buildings to 3 residential dwellings comprising 2 larger and 1 smaller dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Both parties refer to the submission of revised drawings during consideration of the application. The Council's decision notice does not list the drawings subject to the determination, but the appellant lists these in the appeal statement. Having regard to those specified (and to previous versions of these drawings) there are inconsistencies in the drawings. In respect to the main front north-western elevation, the proposed elevation 1819_07P5 appears to show retention of the existing wide sliding agricultural doors whereas the proposed floor plan 1819_06P2 shows 4 personal doors, 2 for main entrances and 2 for utility rooms; these would be more suited to residential use. For the purpose of my determination I have taken the floor plan as indicative of the proposal.
3. Class Q enables as permitted development the change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) together with building operations reasonably necessary to convert the building to that use. The Council considers the proposal to satisfy the limitations to permitted development set out at Q.1.(a)-(m) except for Q.1.(i) where it considers the proposal to go beyond what is reasonably necessary for the buildings to function as dwellinghouses.

Main Issues

4. The main issues are (a) whether the proposal would be granted planning permission by Article 3, Schedule 2, Part 3 and Class Q with regard to whether the requirements of Class Q.1.(i) of the GPDO would be met, and if so (b) whether or not prior approval would be required in accordance with the conditions set out in paragraphs Q.2.(1) (e) and (f) of the GPDO.

Reasons

Extent of permitted development

5. The appeal concerns a row of three adjacent agricultural barns. The two to the south-western side to the row are of identical size and would each be wholly converted to a single dwellinghouse. The third barn to the north-eastern end of the row is wider and has a higher pitched roof. Most of this barn would be retained in agricultural use with a two bedroom dwelling created to its rear south-eastern side. Blockwork to the lower part of walls to all three barns would be retained but punctuated by new window and door openings. Fibre cement cladding would replace the corrugated asbestos sheeting to the upper walls and roof. All three barns are large structures with no internal divisions; internal walls would be erected to enable the creation of rooms.
6. Paragraph Q.1.(i) states that the proposal would not be permitted by Class Q 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 building operations allowed by paragraph Q.1(i)(i).
7. The GPDO does not define what “*reasonably necessary*” may mean but Planning Practice Guidance (PPG) is of some assistance. Paragraph 105 of PPG states “*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*”¹. This requires assessment of the suitability of present structures for conversion having regard to the limited nature of permitted enabling operations. It is only when the existing building or buildings are already suitable for conversion that the permitted development allowances would apply.
8. Unit 3 to the rear of the largest barn would require the construction of a full height, full width wall to separate the retained agricultural barn from the proposed dwelling. Whilst this would be an internal wall to the building, it would be an external wall to the proposed unit. Its construction would be a necessary pre-requisite to the creation of the unit and its separation from the retained agricultural unit in the sub-division of the barn. As the wall would be about 7.5m high and about 15m in width, it would be a substantial structure. The Council contend that given its size, it would have to be a structural wall to withstand consequent stresses, but the proposal does not contain any structural information on the wall.
9. The appellant has submitted a structural appraisal on the barns². This confirms that all three barns have been formed from precast concrete frames with blockwork walls in-between and have an in-situ concrete ground bearing slab floor. The report concludes that these elements appear to be in good condition and that there are no structural reasons why the conversion cannot proceed subject to detailed architectural and engineering design. I have no reason to

¹ Planning Practice guidance Paragraph: 105 Reference ID: 13-105-20180615

² BSF Consulting Engineers Ltd Report March 2019

- doubt the structural integrity of the existing buildings, but the report and drawings do not provide further comment on the structural implications of the proposal or on the structural requirements of the proposed separating wall.
10. My attention has been drawn to the recent High Court judgement in the Hibbitt case³. The essence of the dispute in this case concerned whether the proposed "conversion" amounted to a "rebuild". The Hibbitt case involved a barn that was largely open sided on three sides and it was concluded that the works involved would go well beyond what could reasonably be described as conversion and would be so extensive as to comprise rebuilding. I accept that the appeal buildings are unlike that in the Hibbitt case in that they comprise existing external walls to all sides.
 11. Nonetheless, the conversion to form unit 3 does not wholly rely upon existing external walls but is dependent upon the construction of a wall that does not currently exist. Moreover, the wall would not be a minor addition. Its length equates to the long axis of the proposed unit and would amount to about a third of the length of 'external' walls that would define and contain the unit. The proposed dividing wall would go beyond the erection of a domestic internal wall and would be essential to separate the proposed dwelling from the remainder of the rural building and its agricultural use. In this respect, the existing building is not "*already suitable for conversion to residential use*". It would not therefore comply with the permitted development criteria set out in Class Q.1.(i) of the GPDO.
 12. The appellant contends that the separating wall should be regarded as an internal wall and refers to the commentary at Paragraph 105 of PPG. This states, "*Internal works are not generally 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 floor space permitted, or internal walls, which are not prohibited by Class Q*". This confirms that internal walls are not generally development and that the scope for their inclusion in conversions under Class Q is wide. Nonetheless, this scope is set within a requirement that the building works are reasonably necessary to convert a building that is already suitable for conversion. My findings are that the necessity for the dividing wall to separate unit 3 from the retained agricultural unit within the same building indicates that the building is not already suitable for conversion.
 13. The appellant points out that Class Q does not restrict the number or length of exterior walls that can be replaced. The dividing wall would in effect be a new external wall to unit 3. Reference is made to two appeal decisions that show extensive replacement of exterior walls⁴. However, these proposals relate to the conversion of whole buildings to single dwellings and therefore differ from the current appeal proposal. Reference is made to another appeal which involves the creation of two dwellings within a single barn⁵. An internal timber frame structure was proposed between these two units. This would be like other internal walls separating rooms within a dwelling and quite different from the substantial brick wall needed to separate the converted unit from a retained agricultural use in the remainder of the building in the current appeal.

³ Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

⁴ APP/L3245/W/18/3216271 and Appeal Ref: APP/D0840/W/18/3208377

⁵ APP/R0660/W/18/3211093

14. The appeal proposal would be more akin to the dismissed appeal referred to by the Council to create a dwelling within part of an existing agricultural building⁶. The proposal would not meet the requirements of Class Q.1.(i) of the GPDO.
15. Units 1 and 2 would both involve the creation of open courtyards within the framework of the smaller barns to allow natural light to penetrate central parts of the new dwellings. This is particularly the case for unit 2 which occupies the equivalent to a 'mid-terrace' position and which could only otherwise benefit from front and rear windows. Demolition involving the removal of part of the outside wall to unit 1 and part of the roof to unit 2 to create open courtyards would result in the requirement of new external walls to face on to these courtyards, and units 1 and 2 having a shape and profile different to the that of the existing barns. The Council's defence of its decision has not expressly referred to these changes and they are not determinative in my decision.

Prior approval

16. Given my conclusion that the proposed change of use would not be permitted development under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required in relation to the effect on the setting of a listed building or the adequacy of living conditions in unit 3 under the conditions set out at Class Q.2.(1) (e) and (f). This would not alter the outcome of the appeal.

Conclusion

17. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Article 3, Schedule 2, Part 3 and Class Q of the GPDO. It would not satisfy the requirements of Class Q.1.(i) of the GPDO and would thereby be development for which an application for planning permission would be required. The appeal is therefore dismissed.

Rory MacLeod

INSPECTOR

⁶ APP/E2001/W/18/3199201