
Appeal Decision

Site visit made on 22 January 2020

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/H1840/W/19/3239021

**Agricultural Building at Evesham Road, Harvington,
Worcestershire WR11 8LY**

- 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, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Messrs G&G Mauro against the decision of Wychavon District Council.
 - The application Ref: 19/01466/GPDQ, dated 2 July 2019, was refused by notice dated 27 August 2019.
 - The development proposed is 'change of use of an agricultural building to 5No. dwelling houses (Class C3) and for associated operation development.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form was not dated but the appeal form states that the original application was made on 2 July 2019. Therefore, I have used that date in the banner heading above.
3. I have taken the description of development in the banner heading above from the Council's decision notice and the appeal form, as it appropriately describes the development and there was no easily usable description within the application form.
4. The Council is satisfied that, in accordance with Class Q(a) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO), the proposal is development consisting of '*a change of use of a building and any land within its curtilage from a use as agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order*'.
5. The Council Officer's Report suggested that the proposal failed to comply with the limitation detailed in Q.1(b)(bb), on the basis that the existing building is in excess of 465m². However, that clause indicates that it is the cumulative floor space of the existing building or buildings that is changing into a larger dwelling or dwellings which must be less than 465m². In this case, the appellant advises that the floor space being converted into larger dwellings is 425m², which is below the relevant limit. That aspect is not referred to in the decision notice and the Council does not pursue or dispute it in its Appeal Statement.

Therefore, I see no reason to disagree with the appellant on that matter. Rather, the Council holds that the proposed building and demolition works go beyond what would be reasonably necessary to convert the building, and amount to rebuilding rather than conversion.

6. The appellant has submitted a revised plan¹ with the appeal documentation. It illustrates a possible alternative scheme, which would retain parts of the steel portal framed structure which were to be demolished. However, the *Procedural Guide: Planning appeals - England*² advises that: '*If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application. The local planning authority should be open to discussions on whether it is likely to view an amended scheme favourably.*' (Annexe M.1.1). It also advises that '*the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.*' (Annexe M.2.1).
7. While I recognise that this is a prior approval application rather than a standard planning application, retaining significant parts of the portal framed structure which were to be demolished under the original scheme, would be more than a minor change. Indeed, in my view, the development would be so changed that to consider it on the basis of the revised plan would prejudice other interested parties. Therefore, I consider that the appeal should be decided on the basis of the proposal and plans as set out in the original application for prior approval.

Main Issue

8. Given the above, the main issue is whether or not the development proposed would be permitted development, as provided for by Class Q of the GPDO with particular regard to:
 - whether the development would consist of building operations reasonably necessary to convert the building to residential use, as described within Q(b) and with reference to Q.1(i) of Schedule 2, Part 3, Class Q of the GPDO.

Reasons

9. The appeal building is a large, single storey, steel portal-framed agricultural building with steel sheeting to the walls and fibre cement sheeting on the dual pitched roof. The floor is concrete. It is proposed to convert the building to 5 dwellings in total, consisting of 2 'larger' dwellings and 3 'smaller' dwellings.³
10. It was held in *Hibbitt v SSCLG [2016] EWHC 2853 (Admin)* that the concept of 'conversion' is found in the overarching provisions of Class Q. Moreover, that it introduces a discrete threshold whereby if a development does not amount to a 'conversion', then it would fall at the first hurdle, without having to delve into the exceptions in Q.1. That aspect was found to be a freestanding requirement that must be met irrespective of anything in Q.1. The concept of 'conversion' has inherent limits which delineate it from a 'rebuild'.⁴ As Class Q refers to the concept of 'conversion' then it necessarily excludes 'rebuilt'. As stated in

¹ Drawing No: 3448 – P3 Revision A

² February 2020

³ As defined in Q.3. Interpretation of Class Q

⁴ Paragraph 26

*Hibbitt, 'it is a matter of legitimate planning judgment as to where the line is drawn [between the two]. The test is one of substance...'*⁵

11. The Planning Practice Guidance (PPG) advises: '*Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the right 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.*'⁶ Given this is Government advice on the application of Class Q permitted development rights, it is reasonable to give it significant weight.
12. Therefore, the essential question is whether the proposed works go beyond what might sensibly or reasonably be described as a conversion and effectively amount to a rebuild, which both *Hibbitt* and the PPG indicate would fall outside the scope of permitted development under Class Q.
13. The appellants concede that the proposal would involve the demolition of about 50% of the original building, while their Structural Appraisal⁷ also acknowledges that the proposal involves '*substantial demolition.*' It is clear from the submitted plans, particularly those showing the proposed ground floor, intended demolition and existing and new walls⁸, that the building would be radically redesigned, with significant blocks of its current built form completely removed to accommodate gardens and parking areas. The resulting shape and footprint of the new building would bear little resemblance to its current essentially oblong form. Instead, it would comprise a set of modular-like blocks joined together in a quite different formation to the single block form of the existing structure, albeit the remaining elements of the steel portal frame would be utilised.
14. In addition, the existing wall and roof claddings on the remaining parts of the building would be removed and replaced with insulated panels. The walls would feature render and timber cladding. Several entirely new spans of external walls would be constructed, with significant new sections required to form the three smaller dwellings, within what is currently the interior of the existing building. They would only be external walls because much of the existing building would be demolished.

⁵ Paragraph 27

⁶ Paragraph: 105 Reference ID: 13-105-20180615: Revision date: 15 06 2018

⁷ 'Report on suitability for conversion into residential accommodation': Prepared by: GCA Consulting (May 2019)

⁸ Drawing Nos: 3448 – P2 and 3448 – P4

15. I am conscious that Q.1(i)(i)(aa) and (bb) accept the installation or replacement of windows, roofs, or exterior walls or services to the extent reasonably necessary for the building to function as a dwellinghouse and that Q.1(i)(ii) allows for partial demolition to the extent reasonably necessary to carry out the building operations allowed by paragraph Q.1(i)(i). However, those clauses relate to development under Class Q(b) which includes '*building operations reasonably necessary to convert the building*' to residential use. Therefore, they are still ultimately subject to the overall planning judgment, already referred to, as to whether the building operations to facilitate the change of use would constitute a 'conversion' or if, in substance, they would go beyond that and effectively amount to a 'rebuild'.
16. Complete demolition of a building is not a pre-requisite for a proposal to be considered a rebuild. Furthermore, the fact that the appellants consider that the works may be reasonably necessary for this particular 5-unit scheme, does not go to the more fundamental question of whether the building operations amount to a rebuild rather than a conversion.
17. While substantial works could still fall within Class Q, the extent of the works to be undertaken is a relevant consideration in forming a judgement about whether the works form part of a conversion or amount to a rebuild, as confirmed in *Hibbitt*.⁹ In this appeal, as already quantified, the proportion of the building to be demolished would be substantial. Moreover, the nature of the demolition would alter the form and footprint of the building to such an extent that its original structure would no longer be legible. While, in structural terms, the remaining parts of its steel frame could support the changes, the level of the building operations goes beyond what could reasonably be considered a conversion and is more akin to a rebuild. Therefore, it would fall outside the scope of permitted development for the purposes of Class Q(b).
18. A broader policy argument that the permitted development rights under Class Q should be construed narrowly was also broadly accepted in *Hibbitt*. That proposition was based on the following: Class Q, as a category of permitted development, defines cases where permission is automatically granted without there being an assessment or appraisal of the merits of the proposed development against guidance within paragraph 55 (now paragraphs 78 and 79) of the National Planning Policy Framework,¹⁰ save for in relation to the prior approval matters. Therefore, a narrow construction of Class Q is appropriate to strike a suitable balance between the advantages of automatic approval and the more detailed assessment associated with a planning application, where issues relating to the creation of isolated homes in the countryside or, indeed, the accessibility of services would become relevant. In other words, only relatively clear-cut cases should be able to benefit from this faster-track, lighter touch approach leaving more marginal cases to the ordinary planning system. Therefore, from that broader policy perspective, even if one accepted some of the propositions put by the appellants, this proposal would not clearly or obviously meet the permitted development criteria under Class Q.
19. The appellants cite an appeal decision relating to a barn at One Lower Lodge Farm, Oversley Green (the Oversley Green decision)¹¹ in support of their case. Referring to paragraph 17 of the decision, the appellants state that the

⁹ Paragraph 34

¹⁰ February 2019

¹¹ APP/J3720/W/17/3179581

Inspector did not consider the cumulative works of the installation of an exterior wall on the whole of one elevation. as well as the replacement of the other three walls, to be tantamount to a rebuild. However, paragraph 17 refers to '*part replacement walls to the side elevations.*' Therefore, the changes were not quite as extensive as suggested by the appellants.

20. Furthermore, paragraphs 11 and 12 of the Oversley Green decision indicate that the existing sub-structure of the building, including its steel frame and parts of its wall rails would be retained, along with the existing roof and much of the concrete thrust walling along the side elevations. The only 'demolition' referred to relates to the removal of existing steel cladding for aesthetic reasons. Therefore, the extent and nature of the building operations involved in that conversion, of an open-fronted barn to one dwellinghouse, appear far more limited both in nature and extent from that proposed in the appeal before me. As there are significant differences between the Oversley Green appeal and this appeal, I give it limited weight. Moreover, all appeals must be judged on their individual merits, which is the approach I have taken here.
21. A prior approval granted by the Council for a conversion at Lord's Hill Farm is cited by the appellants. According to the appellants, it involved a separate procedure relating to a demolition notice for 85% of the building, and an application under Class Q for the change of use of the remaining 15% to residential use.¹² However, I have limited details of the particulars of that process and scheme or the circumstances that led to the Council granting the relevant permission. Therefore, while it appears to have involved significant demolition works, it is not clear that it is directly comparable to the appeal proposal. Indeed, the procedural differences would suggest otherwise. In any event, I am required to assess the appeal proposal before me in relation to the criteria set out within the relevant part of the GPDO, which I have done.
22. The above factors lead me to conclude that the development proposed would not be permitted development, as provided for by Class Q of the GPDO, as it would not consist of building operations reasonably necessary to convert the building to residential use, as described within Q(b) and with reference to Q.1(i) of Schedule 2, Part 3, Class Q of the GPDO.

Other Matters

23. The appellant submits that the street scene view of the building from Evesham is '*not significantly altered*'. However, the Council did not raise an issue with the design or external appearance of the building, a prior approval matter.¹³ Rather, it found that the proposal did not fall within the scope of the development permitted under Class Q, in the first place. Therefore, that observation, whether correct or not, has limited relevance to the appeal.

Conclusion

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

¹² Refs: 17/00262/DEM and 17/02476/GPDQ

¹³ Q.2(1)(f)