
Appeal Decision

Site visit made on 4 February 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2020

Appeal Ref: APP/L2630/W/19/3242074

Building 4, Hill Top Farm, Brockdish, Norfolk IP21 4JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant approval required under Schedule 2, Part 3, Paragraph Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Danny Ward Builders against the decision of South Norfolk District Council.
 - The application Ref 2019/1481, dated 18 July 2019, was refused by notice dated 9 September 2019.
 - The development proposed is conversion to two residential units.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the conversion to residential units at land at Building 4, Hill Top Farm, Brockdish, Norfolk IP21 4JT in accordance with the terms of the application Ref 2019/1481, dated 18 July 2019, pursuant to Schedule 2, Part 3, Class Q (a) and (b) of the GPDO, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal scheme is a change of use of an agricultural building to a dwelling house (Class Use C3). Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits development consisting of Q(a) a 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) of the Schedule of the Use Classes Order¹, and Q(b) building operations reasonably necessary to convert the building.
3. Schedule 2, Part 3, Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out the prior approval process. It states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Main Issues

4. 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, having particular regard to:
 - Whether the building operations proposed are reasonably necessary for the building to function as a dwelling houseand, if those requirements are met;
 - whether the proposed change of use would require prior approval under Class Q.2 (1) of Schedule 3, Part 2 of the GPDO.

Reasons

5. The GPDO states at paragraph Q.1(i) that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or external walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations.
6. The Planning Practice Guidance (PPG) states at paragraph 105 that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. In this respect, 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, would be permitted. However, the PPG clarifies 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. It is only where the existing building is already suitable for conversion that the building would be considered to have the permitted development right.
7. The appeal relates to a six bay steel framed agricultural building with an apex roof. Externally the building is clad with profiled fibre cement sheeting and timber cladding on the elevations. The proposal is to convert the building to provide two dwellings. This would involve the removal of the existing timber cladding and its replacement with cladding formed from timber frame panels which would extend from the floor slab to the underside of the eaves. The existing structural frame would remain in place and provide the main load bearing element of the building. The existing roof would be retained and lined internally. The existing floor would be retained and levelled with screed and damp proof membrane applied.
8. The Council considers that the works outlined above go beyond those defined as building operations reasonably necessary to convert the building. However, Paragraph 105 of the PPG recognises that the development rights set out within Class Q 1(i) allow for the building to function as a dwelling with some building operations which would affect the external appearance of the building to be permitted. The PPG also 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.”

9. The main parties have referred me to the Hibbitt² judgement, which considers the interpretation of “reasonably necessary” in Class Q. In Hibbitt, it was held that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. It also provides a detailed assessment of the differences between conversion and re-building.
10. In this case, the appeal building is not the same as that considered as part of the Hibbitt judgment. Indeed, the building has a roof and walls on all sides. The Hibbitt building had open sides and it was mainly because of this that the extent of new external walls needed meant that the proposal would not be a conversion. The judge in the Hibbitt case indicated it is a matter of judgment, for the decision maker, to establish in each case where the line is drawn, by considering the type and extent of the works proposed in terms of whether a proposal amounted to a conversion rather than a re-build.
11. As part of the submitted evidence, a report from a structural engineer (JRG/19/059/A) has been prepared, which advises that the existing steel frame and purlins would be suitable to form the principal structure of the converted building and that the steelwork is adequate to support the timber cladding to the walls. But it identified that internal partition walls would be needed to improve the lateral stiffness of the structure. However, internal works are not generally considered to be development.
12. In my view, the Structural Engineer is perfectly placed, given his role and qualifications, to advise on the issue of whether new structural elements would be required. I have therefore given his professional opinions significant weight. In the absence of any convincing evidence to the contrary and in light of the comments of the Structural Engineer, I am satisfied that the existing steel frame is capable of taking the loading associated with the new external works.
13. In conclusion, taking into account that existing structural frame would remain in place and provide the main load bearing element of the building, the alterations proposed do not go beyond those necessary for the building to function as a dwelling and the replacement of the existing walls by recladding are works which are specifically covered by the GPDO.
14. In order to benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must involve only building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i). Based on the evidence before me, it has been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q.

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

Whether the proposed change of use would require prior approval under Class Q.2 (1)

15. Having confirmed that the proposal would meet Paragraph Q.1 in full, I am satisfied that the proposal would be permitted development, it is necessary to consider matters required to be addressed under prior approval in Paragraph Q.2 (1) of the GPDO as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building.
16. The Council has indicated in its Officer Report that it considers the scheme to satisfy the requirements of Paragraph Q.2(1)(a) to (f). I note that no objections have been raised in respect of contaminated land, or from the Council's Water Management Officer to the details that have been submitted for the disposal of foul and surface water. With regards to the proposed location and siting, I do not find that the proposed arrangements would be impractical or undesirable as the remainder of the site appears to be redundant from agricultural use and as such is not likely to result in noise and disturbance to future occupiers.
17. Therefore, none of the matters set out at Paragraph Q.2(1)(a) to (f) in the context of this appeal indicate that prior approval should be withheld.

Conditions

18. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of 3 years starting with the prior approval date, so it is not necessary or reasonable to impose a separate time limit as requested by the Council.
19. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity, it is necessary to impose a condition setting out the approved plans.
20. A condition relating to foul and surface water drainage is also necessary to ensure satisfactory drainage and flood / pollution prevention. I have amended the Council's suggested conditions where necessary to better reflect the requirements of the PPG.
21. In order to ensure an appropriate level of parking provision, I have imposed a condition requiring the parking spaces to be provided prior to occupation of the dwelling and retained for the life of the development.

Conclusion

22. For the reasons set out above, I conclude that the appeal is allowed and prior approval is granted.

G. Pannell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 5866 24 Location Plan; 5866 22 Existing Plan; 5866 14C Conversion Plans.
- 2) The dwellings hereby permitted shall not be occupied until the surface / foul water drainage works have been implemented fully in accordance with the approved details and thereafter maintained and retained for the life of the development.
- 3) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
- 4) No dwelling shall be occupied until space has been laid out within the site for 6 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.

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