



Appeal Decision

Site visit made on 25 February 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 19 March 2020

Appeal Ref: APP/Y2810/X / 19/3233505

Home Farm Buildings, Dark Lane, Braunston, Daventry

Northamptonshire NN11 7HJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use.
 - The appeal is made by Mr R Harrison against the decision of Daventry District Council.
 - The application Ref DA/2019/0281, dated 28 March 2019, was refused by notice dated 13 May 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: Change of use of a Dutch barn and agricultural building to 1 No dwelling house in accordance with the details submitted under prior approval application PD/2018/0073.
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Decision

1. The appeal is dismissed.

Matters of clarification

2. On behalf of the appellant it is confirmed that the LDC application was made in order to *'confirm that the Council's failure to determine the submitted Prior Approval application PD/2018/0073 under Class Q(b), Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO), within the specified 56 day period, results in the development being able to be carried out without the requirement for the Prior Approval of the Local Planning Authority'*.
3. Thus the LDC application was seeking a certificate to confirm that, on 28 March 2019 the date of the application, the proposed change of use of the Dutch barn and the agricultural building to a residential dwelling, was lawful for planning purposes on the basis that the Council failed to determine the application for Prior Approval within the statutory 56 days as set out in Schedule 2, Part 3, paragraph W of the GPDO. Although the Council tried to agree an extension to the 56 day period. However, for whatever reasons this was not agreed.
4. However, a proposal cannot automatically become lawful, simply because such a determination was not made within the required timeframe. The Court of Appeal has upheld the position (*in Keenan v Woking BC & SSCLG [2017] EWCA Civ 438*) that development cannot become PD by default if the LPA fails to make a determination within the required period.

5. Normally a failure to determine within the prescribed period allows a proposal to be carried out (paragraph W, Part 3, Schedule 2 of the GPDO). However, any development carried out cannot be lawful if it is not PD within the scope of what is allowed under Class Q(b) of the GPDO 2015. It is on this basis that I must consider this appeal.

6. In relation to a Prior Approval application, made under Part Q(b), a LPA is not entitled to consider whether or not the details submitted constitute PD, outside of the 56 day period for its determination. However, in this case the LPA must consider the LDC application and, therefore, is clearly entitled to respond to the appellant's contention that the proposed development was lawful for planning purposes on the date of the LDC application. This response is set out in the Council Officer's Delegated Report (CODR) dated 10/5/19.

Background information

7. The two appeal buildings (Barn 1 and Barn 2) are located on agricultural land to the east of the main farm buildings at Home Farm. This lies on the south-eastern outskirts of Braunston close to the Grand Union Canal. Barn 1 is a steel-framed, corrugated asbestos roofed, Dutch Barn with profiled sheeting to its south-east wall and gable. Barn 2 is a Pole Barn, roofed in profiled metal sheeting with stone gables up to eaves level, faced internally with brickwork. The south-east wall is clad in profiled metal sheeting and the north-west elevation is open.

8. A Structural Report of the two barns (R9738/rs), dated 4 October 2018, was prepared on behalf of the appellant and submitted as part of the LDC application. I refer to parts of this below. The application also included a supporting letter dated 30 November 2018; a completed application form and drawing Nos HAR-304-PA-001, 100 & 200 and HAR-304-SUR-001 & 100.

9. The chronology of the submission and progress of the application are set out in paragraph 4 of the appellant's Appeal statement. There is no dispute about this sequence of events or that the 56 day expiry period (based on the application date of 30 November 2018) was 26 January 2019. The LDC application, the subject of this appeal, was then submitted on 28 March 2019 and refused on 13 May 2019.

10. Following a site visit in January 2019 the Council raised concerns about the application and indicated that the proposal did not meet the criteria for an application under Part Q. However, the Council Officer considered that that an application for the conversion of the Pole Barn might be acceptable as a single dwelling. However, following a request from the Council for extra time to consider the application it was confirmed that this was not acceptable and the 56 day period expired.

Reasons

General points relating to LDC appeals

11. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the relevant test, relating to submitted evidence, is '*the balance of probability*'.

12. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient or precise information, a LPA may be justified in refusing to grant a certificate.

The main issue

13. The main issue in this appeal is whether or not the details of the Prior Approval application PD/2018/0073 accord with the conditions, limitations or restrictions of Class Q of the GPDO.

My assessment

14. Permitted development under Class Q allows building works to be carried out to change agricultural buildings to residential use. This right assumes that the agricultural building(s) is capable of functioning as a dwelling; that the building operations are reasonably necessary to convert the building and that such operations can include the installation or replacement of windows, doors, roofs, exterior walls and services. However, it is made clear that it is not the intention of the PD right to allow rebuilding work which would go beyond what is 'reasonably necessary for the conversion of the building' (my italics and underlining) to residential use. Therefore, it is only where the existing building(s) is already suitable for conversion to residential use that the building would be considered to have PD rights.

15. In the case of *Hibbitt and another v SoS for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin) LG (the Hibbitt case), it was found, amongst other things, that;

'work which would go beyond what is 'reasonably necessary for the conversion of the building' (my italics and underlining) to residential use. Therefore, it is only where the existing building(s) is already suitable for conversion to residential use that the building would be considered to have PD rights.

If a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions of Q.1. It is a freestanding requirement that must be met irrespective of anything in Q.1.

'..the starting point (the agricultural building) might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such a magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild' might be 'fresh build'.

'a development that includes new structural elements is one that involves a degree of rebuild and is not a conversion' and that;

'In principle an 'agricultural building can at one end of the extreme be a very minimalist or skeletal structure indeed. To convert such a building into a dwelling might involve a very great deal of fundamental work which in terms of its nature and extent is much closer to a rebuild than a more traditional conversion'.

16. Having inspected the buildings, the structural report and the proposed drawings, I share the Council's view that that the works required to achieve the proposed dwelling and garage would, as a matter of fact and degree, be far more than what might reasonably and sensibly be described as a '*conversion*'. Development is not permitted by Class Q if it contravenes the criteria/specifications within sub-sections (a) to (m) as set out in Q.1. In this case sub-sections (c), (d), (e), (h), (j), (k), (l) and (m) are not relevant and there is no dispute that the proposal is not contrary to criteria (a), (b) or (f). This leaves (g) and (i) as the two remaining criteria to consider.

17. I agree with the Council that criterion (g) is not met because the development would result in the external dimensions of the proposed dwelling extending beyond the external dimensions of the existing building. This is because the south-west elevation is open fronted and even if the steel frame were to be utilised the addition of any

cladding to this part of the building would extend beyond the external dimensions of the Dutch Barn.

18. Turning to criterion (i) I consider that work which would go far beyond what is '*reasonably necessary for the conversion of the building*' to residential use. I do not consider that the Dutch Barn or the Pole Barn are '*already suitable for conversion to residential use*'. The Dutch Barn is hardly more than a skeletal frame with minimal cladding to its walls and roof. It is basically a large agricultural shed without proper foundations, with an earth floor and without any substantial cladding.

19. There would be so much work required to make this into a dwelling house that it would, in my view and as a matter of fact and degree, require a complete re-build. Although the structural report refers to the steel frame and purlins being able to be re-used, these would be the only elements able to be used as such. The roofing and side wall materials would be incapable of being re-used and the new walls would require new foundations which again would exceed beyond the external extremities of the existing Dutch barn.

20. The findings in the structural report reinforce my view that the works necessary would entail a complete new build. Amongst other things the report found '*significant structural defects in timber*'; that unexposed or inaccessible woodwork or other parts of the structure could not be stated to be free from defects and that defects and infestation '*are assumed to be incorporated in the refurbishment*'. I find the word '*refurbishment*' to be most misleading. To '*refurbish*' a building is to renovate, restore or redecorate it. In my view, this cannot possibly be described as refurbishment of either of the barns. It is a proposal, in my view, to completely re-build the two barns.

21. In relation to the Dutch Barn the only possible remaining element would be the skeletal steel frame and purlins. None of the existing roof cladding or wall cladding would remain and there would be a need to provide all of the other major elements for the construction of a dwelling. These include foundations; new solid and suspended floors; external and internal walls; windows and doors; all services and drainage.

22. As referred to in the '*Hibbitt*' case, the starting point is so skeletal and minimalist that the works needed to alter or convert the barn to a dwelling would be of such a magnitude that, in practical reality and as a matter of fact and degree, the overall result could only be perceived as being a complete rebuild or '*fresh build*'. This is far from the what might normally be considered to be a conversion under Class Q of, for example, a more substantial stone or brick farm building. Instead, it would be the construction of a new dwelling with the only pre-existing element of the original Dutch barn being the skeletal steel frame.

23. The proposed building works for this barn are set out in paragraph 3.1 of the structural report and this reinforces my view that the necessary building and construction operations, as obviously required, would result in a complete rebuild. The report goes on to indicate, in paragraph 3.2, that similar works would have to be carried out to the Pole Barn and goes on to indicate...'*except the works required would be more extensive*'.

24. Having seen this second barn I can only agree that the works required would indeed need to be more extensive in order to rebuild it, even as just a car-port. From my brief inspection it is evident that this second barn is structurally unsound. I noted that the south-east wall cladding was falling away from the north-west brick and stone gable and that the main truss at that end of the building was pushing one of the structural poles outwards. In order to provide the car port, as shown on the drawing, it would have to be more or less taken apart and rebuilt.

25. From my inspections of both barns I consider that neither of the proposals amounts to a '*conversion*' of what is on site. Therefore, as indicated above it fails at the first hurdle, irrespective of the need to consider the exceptions/criteria of Q.1. Both the proposed dwelling and the car port would need '*new structural elements*' involving degrees of rebuild that, as a matter of fact and degree do not amount to conversions of the existing farm buildings.

26. In conclusion, therefore, I agree with the Council that the proposals do not benefit from the PD rights conveyed by Schedule 2, Part3, Class Q(b) of the GPDO. I consider that the works to form the dwelling and the car port would go well beyond what might reasonably be described as conversion. Instead the development would, as a matter of fact and degree, in all practical terms, be starting afresh with the retention of only minimal parts of the original farm buildings.

27. To convert these two buildings into a dwelling and a car port would clearly involve a very great deal of fundamental building and construction works work which, in terms of its nature and extent is much closer to a rebuild than a more traditional conversion'. I consider that the necessary works would go beyond what is '*reasonably necessary for the conversion of the building*'. I find that the two barns are not readily suitable for conversion to residential use. It follows that the proposal cannot be permitted development under Class Q; that a lawful development certificate will not be issued. The appeal is dismissed.

Other Matters

28. In reaching my conclusions in this appeal I have taken into account all of the other matters raised on behalf of the appellant and by the Council. These include the documents submitted with the LDC application; the various e-mails between the Council and appellant's agent; the full contents of the structural report; the submitted drawings; the appellant's appeal statement; the Council's Delegated Report; the Council's appeal statement and the photographic submissions.

29. However, none of these carries sufficient weight to alter my conclusion that the proposals do not constitute permitted development under Class Q of the GPDO and nor is any other factor of such significance so as to change my decision that a LDC cannot be issued in this instance.

Formal Decision

30. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector