



Appeal Decision

Site visit made on 9 March 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/R0660/W/19/3236843

Agricultural Building, Hawksbill Hall, Hollyhurst Road, Wrenbury CW5 8HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended 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 'GPDO').
 - The appeal is made by Mr David Goodyear against the decision of Cheshire East Council.
 - The application Ref 19/3283N, dated 10 July 2019, was refused by notice dated 4 September 2019.
 - The development proposed is for the change of use of an agricultural building to two dwellings and associated building operations.
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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 GPDO for the change of use of an agricultural building to two dwellings and associated building operations at Hawksbill Hall, Hollyhurst Road, Wrenbury CW5 8HT, in accordance with the details submitted via application Ref 19/3283N, dated 10 July 2019, subject to the schedule of conditions below.

Preliminary matters

2. The description of development in the banner heading above succinctly describes the proposal based on the appellant's planning statement and the Council's decision notice. I note that the Council determined that prior approval was not required for the erection of another, as yet unbuilt, agricultural building within the same holding in August 2017.¹
3. Revised plans 1438/01D, 1438/02 Rev E, and 1438/04 Rev D supersede those originally submitted. However those plans, reviewed by the Council, do not significantly alter the proposal. Instead they remove from the appeal site buildings not in the same use,² illustrate amended outside space by consequence, and accurately represent the proposed roof relative to the existing building. There is no reason to discount those plans from my assessment of the scheme.

Legislative context

4. The proposal relates to Schedule 2, Part 3, Classes Q(a) and (b) of the GPDO. Those classes allow for the change of use of a building and any land within its

¹ Ref 17/3949N.

² Including a mobile home related to unsuccessful application Ref 16/4314N.

curtilage from use as an agricultural building to a C3 use, and also reasonably necessary building operations to achieve that conversion (subject to certain limitations in paragraph Q.1, and conditions in paragraph Q.2).

5. Whilst in the open countryside, the Planning Practice Guidance ('PPG') explains that there is no 'test' in respect of sustainability of location as regards Class Q.³ The right to change use is established, in principle, via legislation as opposed to falling for consideration in line with the statutory development plan unless material considerations indicate otherwise.

Main issue

6. The Council's associated officer report explains that the scheme entails 'new walls, new roof and new floor... This would be beyond what could be a conversion scheme, and the LPA has taken this view on similar cases for the creation of dwellings from steel sheds.' The Council therefore contend that the proposal would not comply with the limitations on building operations specified under GPDO Schedule 2, Part 3, Class Q, Q.1(i).
7. Reflecting those provisions, the PPG sets out how 'it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the [Class Q] permitted development right'.⁴ The judgement in *Hibbitt & Anor v SSCLG & Ors* ('Hibbitt') is relevant in that context, concerning the extent of permissible building operations.⁵ Paragraph 27 of that judgement distinguishes between a conversion and development so fundamental as to effectively amount to a rebuilding; the line between the two ultimately being a matter of case-specific planning judgement.
8. In that context the main issue, and sole matter in dispute between the main parties, is whether or not the proposal would represent a permissible conversion with regard to the nature of the building operations proposed.

Reasons

9. The existing building is a substantial steel portal barn of standardised construction. It comprises six bays and is enclosed by corrugated metal sheeting of varying ages, aside from a small open section above barn doors. In part, the floor is solid slab. At the time of my site visit the barn was used for the storage of hay, and also miscellaneous items apparently associated with the maintenance and running of the surrounding land and buildings.
10. The proposal is to demolish two of the six bays and create two 'larger' dwellinghouses using the remaining building. Each unit would have a floor area of 199.2sqm (plan 1438/02) and have accommodation arranged over two floors.⁶ A slightly different combined gross internal floorspace of 397.6sqm is stated elsewhere by the appellant, and 432sqm is given in the Council's officer report.⁷ Plan 1438/04 Rev D shows that new roofing would be installed, cladding put in place, along with the creation of various new openings for

³ Reference ID: 13-108-20150305.

⁴ Reference ID: 13-105-20180615.

⁵ EWHC (Admin), 9 November 2016.

⁶ PPG reference ID: 13-105-20180615 indicates the insertion of upper floors are not inherently prohibited.

⁷ Any figure being less than 465sqm as set out in GPDO paragraph Q.1(b)(bb).

windows and doors. Collectively, I acknowledge the Council's position that the proposal would change the existing building significantly.

11. However the installation or replacement of 'windows, doors, roofs or exterior walls' is permissible (GPDO paragraph Q.1(i)(i)(aa)). Whilst significant, the proposed works do not go beyond those categories. In my view such building operations are reasonably necessary in order to convert an uninsulated utilitarian building into dwellinghouses with appropriate levels of amenity (natural light by virtue of the creation of new openings in particular). Partial demolition, to the extent reasonably necessary to carry out building operations allowed under paragraph Q.1(i)(i), is also permitted under Class Q.
12. It could be argued that the demolition proposed is a choice rather than a necessity. Nevertheless, given the scale and form of the existing building, there are conceivably many potential options that could reasonably have been advanced under Class Q. The legislation does not require that demolition must be absolutely necessary, i.e. to achieve the only practical option for conversion. Moreover the GPDO defines 'building' as including 'any part thereof',⁸ and consequently there is no requirement that the entirety of a building must be used where conversion under Class Q is advanced. To achieve the floorspace and layout proposed, two bays are superfluous, and the demolition proposed is accordingly reasonably necessary.⁹
13. I have not been provided with specifics of the 'similar cases' referred to in paragraph 6 of this decision, and in any event each proposal must be considered on its particular merits. There is nothing in the GPDO or PPG limiting the application of Class Q permitted development to certain forms or designs of buildings. Additionally, in this instance the proposal is accompanied by an Inspection Report prepared by a Structural Engineer.¹⁰ That Report sets out that, although the building is about 30 years old and there is some superficial rust, it has nevertheless been well maintained and is structurally sound. Consistent with my observations also, the Inspection Report explains how there is no visual indication of corrosion at the foot of columns which, if present, might have indicated structural defects.¹¹
14. The Inspection Report summarises that, without structural alteration or reinforcement, the building could 'easily be re-used as the main frame of any future building', provided the design employs similar structural loading as present. Whilst there are no technical drawings before me as to how the proposed finishes or internal arrangements would tie in with the existing structure, on the balance of the evidence before me the proposal would nevertheless make use of an existing structurally sound building. Works would not go beyond the categories in GPDO paragraph Q.1(i)(i), and partial demolition would accord with the requirements of paragraph Q.1(i)(ii).
15. With regard to the context set out in paragraph 7, I therefore conclude that the proposal would represent a permissible conversion with regard to the nature

⁸ With regard to the judgement in *Mansell v Tonbridge & Malling Borough Council* [2016] EWHC 2832.

⁹ No case is made that the partial demolition of a standard utilitarian agricultural building would otherwise be unacceptable (for example with regard to paragraph Q.2(f), or given the operational needs of the wider holding noting my reasoning in paragraph 2 of this decision).

¹⁰ prepared by Haltec, Consulting Civil and Structural Engineers Ltd., Ref GN0875/JDH/R01.0, dated August 2019

¹¹ As shown at image 17 in particular.

and extent of the building operations proposed, compliant with the relevant elements of the GPDO and PPG.

Conclusion

16. For the above reasons, and having taken account of all other relevant matters, I conclude that the appeal should be allowed subject to the conditions below.

Conditions

17. Prior approval may be granted unconditionally or subject to reasonably related conditions, noting the matters set out in GPDO paragraphs Q.2(1)(a) to (f) in particular. In that context it is necessary to limit the life of the consent, in line with paragraph Q.2(3), and also to impose a condition requiring adherence to the relevant plans for certainty (and so as to ensure the development is implemented as assessed above).
18. I have taken account of GPDO paragraph W(10)(c) of the GPDO in respect of contamination. Paragraph 3.5(e) of the Government's Statutory Guidance related to Part 2A of the Environmental Protection Act 1990 as amended refers to agricultural land, with the PPG indicating that contamination may be present in the countryside associated with certain agricultural practices.¹² In that context, mindful of the need for proportionality, as a precautionary approach I have imposed a condition necessary to ensure any contamination is addressed.
19. I am statutorily required to take reasonable steps to conserve and enhance the natural features of SSSI and to conserve biodiversity.¹³ NPPF paragraph 170 d) sets out how decisions should seek to minimise impacts on biodiversity and provide net gains. Nearby to the south is a site of local importance for nature conservation tracking along the Comber Mere Site of Special Scientific Interest, the latter designated on account of its wetland habitat and ornithological value. In that context I have imposed conditions requiring that construction avoids disturbance to birds, and that suitable enhancements are put in place.
20. In imposing conditions I have had regard to the tests in the NPPF, to relevant elements of the PPG and of statute. I have accordingly amended the wording of certain conditions proposed by the Council without altering their aims. That is particularly so to ensure that conditions three and four are precise and reasonable, noting that parallel provisions exist in section 1 of the Wildlife and Countryside Act 1981 as amended in respect of the latter.

Thomas Bristow
INSPECTOR

¹² Reference ID: 33-003-20190722.

¹³ Section 28(G) of the Wildlife and Countryside Act 1981, section 40 of the Natural Environment and Rural Communities Act 2000 as amended.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted must be completed within a period of three years from the date of this decision in accordance with Schedule 2, Part 3, paragraph Q.2(3) of the GPDO.
- 2) The development hereby permitted shall be carried out in accordance with approved plans 1438/01D, 1438/02 Rev E, and 1438/04 Rev D.
- 3) Any contamination that is identified in the course of undertaking the development hereby permitted, whether on site or via the importation of materials, shall be reported immediately to the local planning authority and development at that part of the site affected shall be suspended.

Before any further development at that part of the site affected continues, a risk assessment and remediation measures shall be submitted to, and approved in writing by, the local planning authority. The risk assessment and remediation measures should accord with British Standard BS 10175: Investigation of potentially contaminated sites- Code of Practice, and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standards and Model Procedures if replaced). Development shall thereafter be carried out in accordance with the agreed risk assessment and remediation measures.

In addition, before either dwelling hereby permitted is first occupied, a verification report prepared by a suitably qualified person shall be submitted to and approved in writing by the local planning authority, establishing that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 as amended (in line with the standards and model procedures as set out above).

- 4) No development hereby permitted shall take place during the bird breeding season of 1 March to 31 August in any year, unless a survey of the site for nesting birds has been undertaken immediately beforehand. A four metre exclusion zone shall be maintained around any nest identified in the survey, within which no development shall take place other than outside of the bird breeding season. In addition, before either dwelling hereby permitted is first occupied, a scheme for incorporating bird-breeding features on site shall have been submitted to the local planning authority, approved in writing by the local planning authority, and implemented. Approved bird-breeding features shall thereafter be retained.