The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2020

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th March 2020

Appeal Ref: APP/R0660/W/19/3239168
Grove End Farm, Blossoms Lane SK7 1RF

- The appeal is made under section 78 of The Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Paragraph Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr and Mrs E Thornton-Chan against the decision of Cheshire East Council.
- The application Ref 19/2309M, dated 9 May 2019, was refused by notice dated 25 July 2019.
- The development proposed is the conversion to a single dwelling.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs E Thornton-Chan against Cheshire East Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:

    - Whether approval is deemed to have been granted by reason of the timing of the Council's decision; and
    - If not, whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, with regard to the associated operational development.

Reasons

Timing of the Decision

4. The Council sought an extension to the determination date until 25 July 2019, and this was agreed by the appellants. Following this agreement, the Council issued its formal decision notice refusing the application on 25 July 2019.

5. The appellants initial grounds for appeal contended that there is no mechanism to extend the time period for determining a prior approval notification under Class Q, or within Article 7 of the GPDO, and the agreement to a time extension did not stop the granting of deemed consent on the cessation of the 56 day period.

6. However, I have been provided with a recent High Court Judgement[1] from the Council. The judgement concluded that Article 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015 does permit applicants and local planning authorities to agree extensions of time for the determination of such prior approval applications.

7. The appellants have been provided the opportunity to comment on the above judgement and agree that it now supersedes the previous case law they provided. On this basis the appellants have confirmed that the decision was taken by the Council within the agreed extension period and that this part of the case can no longer be pursued.

8. Consequently, based on the evidence provided in the form of the recent High Court Judgement, and the appellants acceptance of this, I conclude that the decision was made within the extended time period agreed by both parties, and prior approval is not deemed to have already been granted.

Whether Permitted Development

9. The appeal site forms part of Grove End Farm, the building consists of masonry walls, rendered externally, the cement sheet roof and supports have collapsed into the buildings and been removed in parts, exposing the majority of the building to the elements. Overall the building appears to be in a dilapidated condition.

10. Class Q permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order and any building operations reasonably necessary to convert the building.

11. Paragraph Q.1.(i) (i) places restrictions on the building operations which can be undertaken. It states that development is not permitted 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 dwelling house; and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).

12. The submitted plans and details show that various works are proposed to the building including a new roof, the installation of windows and doors on the external elevations, new internal floors, internal walls and the insulating of the building. Whilst individually some of the proposed works such as the insertion of window and door openings are reasonable, the works required as a whole to convert the building into a habitable condition are substantial, and in my view, would go beyond the extent reasonably necessary for the building to function as a dwellinghouse.

13. Furthermore, whilst some internal alterations are exempt from the definition of development under s55(2)(a) of the Town and Country Planning Act 1990, this applies to works of 'maintenance, improvement or other alteration of any building of works' which 'affect only the interior of the building'. In my view the works in this proposal are more akin to rebuilding, and do involve development, considering the required new roof.

[1] Gluck v Secretary of State for Housing Communities and Local Government [2020] EWHC 161 Admin.

14. I have considered the parties claims in relation to the Hibbitt case[2], and the advice contained in paragraph 105 of the Planning Practice Guidance (PPG), which provides further clarification. The PPG states 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. 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.'

15. The works required in particular the new roof are substantial. In the light of the Hibbitt case and the PPG, the works to facilitate the creation of a residential unit would be so extensive that they would go beyond what could be described as building operations reasonably necessary to convert the existing agricultural building. Whilst a structural report has been submitted, this highlights the need for the new roof and various structural remedial repairs and strengthening to enable the conversion of the building to domestic use. It is my finding, therefore, that the existing building is not suitable for conversion without substantial rebuilding.

16. Consequently, the proposed residential use of the building would not be permitted development because it would not satisfy the requirements of Class Q.1.(i) (i) of Part 3 of the GPDO. Therefore, the proposed development does not benefit from deemed consent granted by the GPDO.

Conclusion

17. For the reasons given above, the appeal is dismissed.

R Cooper

INSPECTOR

[2] Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin).