



Appeal Decision

Site visit made on 10 March 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Appeal Ref: APP/L2820/W/19/3243571

Agricultural Barn, Harborough Road, Dingley, Leicestershire LE16 8PJ

- 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 Mr D Harding, Samuel Harding & Sons Ltd, against the decision of Kettering Borough Council.
 - The application Ref KET/2019/0618, dated 5 September 2019, was refused by notice dated 4 November 2019.
 - The development proposed is prior approval for change of use of agricultural building to 4 dwellings.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of agricultural building to 4 dwellings at Agricultural Barn, Harborough Road, Dingley, Leicestershire LE16 8PJ in accordance with the application KET/2019/0618 made on 5 September 2019, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr D Harding against Kettering Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed development meets the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

4. The appeal relates to a steel framed agricultural building comprising a central section with apex roof and two side sections with catslide roofs. The walls are profiled sheeting above blockwork and the roof is profiled sheeting, with some translucent sections, supported by steel purlins. The elevation of the central section facing Harborough Road is largely open, with double gates, and the two

side sections each have gate width doorways in their front and rear elevations. One side elevation includes a translucent section.

5. The proposed external works comprise the insertion of doors and windows, some adapting existing openings, with new sections of profiled sheeting to make good. The proposed internal works include a raised floor, resting on existing areas of concrete floor and over a central area that would be cleared and reinstated with hardcore and a new concrete slab. Other internal works include the creation of partition walls and the insertion of an inner frame, within the outer walls and under the roof, to support insulation, internal wall surfaces, ceilings and a damp-proof layer. This element would be fixed to the steel frame and the blockwork by metal studs. A Structural Investigation and Report commissioned by the appellant concludes that the steel frame will support the existing structure and the proposed inner frame and that the foundations are suitable for the proposed residential use.
6. The issue in contention relates to the requirement in paragraph Q.1(i) of the GPDO Schedule 2, Part 3 that the conversion works be no more than "reasonably necessary for the building to function as a dwelling house". In this case, that turns on whether the elevational changes, the inner frame and floor constitute new elements that go beyond conversion and amount to rebuilding. Advice in paragraph 105 of the Planning Practice Guidance (PPG)¹ states "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".
7. Both parties have referred to the *Hibbitt* case², which involved four new external walls to a building that was entirely open on two sides and partly open on a third. It was held that "the works went a very long way beyond what might sensibly or reasonably be described as a conversion" and that "the development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building".
8. The appellant has drawn my attention to 5 other appeals where prior approval was granted between March 2018 and November 2019³ and which included changes to elevations.
9. The Council has referred to a further appeal⁴, dismissed in July 2019, in which another Inspector found the proposed works to be greater than allowed for by paragraph Q.1 because "very extensive other works would be necessary including the installation of external wall sheeting, doors and windows and a new roof covering to provide the envelope for the new dwelling".
10. Having considered these appeal decisions and the nature and size of the existing openings in the building, particularly those in the front of the central section, and the damage evident to adjacent sections of sheeting, I do not find the proposed elevational changes to amount to starting afresh, as in *Hibbitt*, or

¹ Reference ID: 13-105-20180615, Revision date: 15 06 2018

² *Hibbitt & Another v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

³ APP/J3720/W/17/3179581, APP/V0510/W/18/3198442, APP/Z3825/W/18/3211612, APP/Y2810/W/19/3234721 and APP/Y2810/W/19/3234921

⁴ APP/L2820/W/19/3223350

to go beyond what would be reasonably necessary to convert the building to residential use.

11. The remaining question relates to the inner frame and the raised floor, which the Council describe as "a superstructure and its associated complete sub-structure layers". Paragraph 105 of the PPG confirms that internal works are not generally development and that "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." I consider the inclusion of insulation in the floor to be reasonably necessary for an agricultural to residential conversion.
12. The list of internal structural works provided in the PPG is not exhaustive and while the text does not mention elements like the inner frame, I consider it to be reasonably necessary to provide insulation that is appropriate to a new dwelling but which was not needed for agricultural use.
13. The existing and proposed sections drawing indicates that the raised floor would rest on existing concrete slabs, but it does not show the central section of the floor. The Structural Investigation and Report indicates that the current floor in this area would be cleared and replaced with a new concrete slab laid over hardcore. From my inspection of the building it was evident that the central section would need to be made level for domestic use, therefore some work must be reasonably necessary and within the scope of paragraph 105.
14. The Council considers that work below ground level would be required to install this section, whereas the Structural Investigation and Report indicates it would not involve excavation below the level of the existing structure.
15. While this new section of floor would support some of the lightweight partition walls, that would be a natural consequence of it lying beneath them. The key wording in paragraph 105 is "to allow for a floor" which implies more than a floor alone. In this context I find the laying of hardcore beneath the section of new concrete floor to be a reasonable action and I note there is no evidence that new foundations would be created.
16. Considering the inner frame and floor in the context of the *Hibbitt* case and the PPG I do not find them to be starting afresh or to go beyond conversion works but reasonably necessary for the building to function as 4 dwellings.

Conditions

17. Paragraph W(13) of Part 3 of Schedule 2 of the GPDO allows for the imposition of conditions reasonably related to the subject matter of the prior approval. I accept that conditions to allow any unexpected contamination to be dealt with and to avoid the new dwellings sharing the access to Harborough Road with farm vehicles would be appropriate for the welfare of the occupiers of the new dwellings and for reasons of highway safety, although I have not been provided with suggested wording.
18. The Council has also suggested a condition to exercise control over the building's external materials. While I have found the proposed external works to be reasonably necessary, I have noted that some new sheeting would be installed. Consequently, I consider it appropriate to impose such a condition to ensure the conversion works are visually acceptable.

Conclusion

19. For the reasons given above the proposal is a conversion permitted by Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO and the appeal is allowed.

Mark Harbottle

INSPECTOR

Schedule of Conditions

- 1) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance 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 Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
- 2) Following the initial occupation of any dwelling, the vehicular access to Harborough Road shall not be used for any purpose other than in association with the residential occupation of the site.
- 3) No development shall commence until details / samples of the materials to be used in the alteration of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.