



Appeal Decision

Site visit made on 12 March 2020

by J Moss BSc (Hons) DipTP MRTPI

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

Decision date: 29 April 2020

Appeal Ref: APP/A0665/W/19/3230285

Quarry Farm, Marsh Lane, Crowton CW8 2RL

- 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, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Steven Bate against the decision of Cheshire West & Chester Council.
 - The application Ref 18/04824/PDQ, dated 10 December 2018, was refused by notice dated 18 March 2019.
 - The development proposed is the conversion of agricultural storage to a dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A description of development is not provided on the planning application form. Accordingly, the description given above has been taken from the appeal form and the Council's decision notice.
3. A revised location plan and proposed site plan (reference PL-001 revision P2) was submitted during the course of the appeal. For the reasons set out later in this decision, this appeal has not been determined having regard to this revised plan.
4. The combined location plan and proposed site plan provided with the application (drawing number PL-001 revision P1) has been annotated to indicate an 'existing road', an 'existing derelict shed buildings to be rebuilt for car parking' and an 'existing barn to be converted into dwelling'. On the site visit I confirmed that the detailed existing plan numbered PL-002 revision P1 and detailed proposed plan numbered PI-003 both relate to the building identified on plan number PL-001 Revision P1 as the 'existing barn to be converted into dwelling'. Accordingly, whilst plan number PL-001 revision P1 refers to operational development proposed to another building within the application site boundary, my decision does not relate to the works proposed to that building.
5. Schedule 2, Part 3, paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) sets out the prior approval process. It states at paragraph W.(3) that the local planning authority may refuse an application where, in the opinion of the authority:

- (a) the proposed development does not comply with, or
 - (b) 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.
6. It was on this basis that the Council refused to grant prior approval.

Main Issue

7. The main issue in this case is whether or not the proposal would be permitted development under Schedule 2, Part 3, Class Q(b) of the Order.

Reasons

8. As the application proposes both a change of use of the building and operational development described in the application form as 'elevational changes', the development subject of this appeal is that referred to under Schedule 2, Part 3, Class Q (b) of the Order. This permits:
- i. a change of use of a building and any land within its curtilage from a use as an agricultural building to a use as a dwellinghouse; and
 - ii. building operations reasonably necessary to convert the subject building to a use as a dwellinghouse.
9. Consideration of both elements of the development are necessary in this case.

Change of Use

10. As noted above, the Order permits the change of use of 'a building and any land within its curtilage'. Paragraph X of Part 3 of Schedule 2 of the Order provides an interpretation of curtilage as:
- (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
 - (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,
- whichever is the lesser.
11. The application form informs that the building has a floor space of 150 square metres, but an area of 300 square metres as within the building's curtilage. This area has not been identified on the site plan and location plan (reference PL-001 revision P1). That plan simply identifies a larger site boundary, outlined in red, to which the application relates. Accordingly, the information submitted with the application indicates an area of curtilage for the building that would exceed that defined in paragraph X of the Order.
12. The Order only permits the change of use of a building and land within its curtilage as defined in the Order. As the area of curtilage identified in this case does not accord with that defined, the development proposed cannot be regarded as permitted development under the provisions of Schedule 2, Part 3, Class Q(b) of the Order.

13. Whilst this was not a matter raised in the Council's decision letter, it is fundamental to whether or not the development is permitted by Class Q. In view of this, the matter was raised with the parties during the course of the appeal. The appellant's response to this has been to amend the proposed site plan and location plan in order to identify an area of curtilage that he suggests is no larger in area than the footprint of the building. Not only does the revised plan (reference PL-001 revision P2) propose a fundamental amendment to the scheme, the area it now identifies as residential curtilage is in conflict with the area indicated on the application forms. Such conflict is irreconcilable without a further amendment to the information submitted with the application (i.e. an amendment to the application forms).
14. The appeal process should not be used to evolve the scheme in such a manner. My decision should, essentially, be based on the information that was considered by the Council in determining the application. The revised plan was not before the Council at that time. It proposes a fundamental amendment to the scheme and provides information that conflicts with the application as submitted. On this basis, I have made my decision without having regard to the revised plan.

Building Operations

15. Class Q(b) of the Order permits a change of use **together with** building operations reasonably necessary to convert the building to a dwellinghouse. As I have concluded that the change of use in this case is not permitted by Class Q(b), it automatically follows that the building operations proposed would also not be permitted.
16. Notwithstanding the conclusion above, I acknowledge that the only matter of dispute between the parties at the start of the appeal process was whether the building operations proposed would be permitted development when considered in the context of part Q.1. of the Order. In view of this, and for the sake of completeness, I have considered this matter.
17. The building in question is a modern agricultural building. The inspection report provided by the appellant's structural engineer confirms that the building has a corrugated roof and both timber and metal cladding on the external elevations. It has an internal frame consisting of four connected steel portal frames, two at either end of the building and two intermediate frames. Internally the building has a concrete floor. I note that the inspection report¹ concludes that the existing building is structurally stable and I have no reason to disagree with these conclusions.
18. Whilst the Council do not dispute the above, it contends that 'the scale of operational work required to alter the use of the agricultural building to that of a dwelling, would be beyond what might be sensibly or reasonably described as a conversion'. In this regard, it is suggested in the officer's report that the proposal does not comply with both Q.1.(b) and Q.1.(i). However, reference to Q.1.(b) would appear to be an error as this part of the Order relates to proposals involving larger dwelling houses. As this is clearly not part of the Council's case, I have not considered this matter further.

¹ Inspection Report by Brian Clancy Higby Partnership reference 18057459/2.03

19. Part Q.1.(i) does not permit development that would consist of building operations other than those listed to the extent reasonably necessary for the building to function as a dwellinghouse. The Planning Practice Guidance on 'When is Permission Required' (the PPG) provides further clarification on the matter of building operations permitted. It informs 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'².

20. In determining whether the building operations are permitted by the Order, I have considered the following elements of the proposed works.

(i) Change of finish to the roof and external walls:

21. The submitted plans show the fitting of timber shingles to the roof and rear elevation, and vertical hard wood cladding fitted to the front and side elevations. The plans do not suggest that the cladding would be fitted over the existing steel profile sheet cladding or boarded timber cladding. Indeed, it is difficult to see how that would be achieved. Accordingly, the building operations would include the replacement of the roof covering and all exterior walls of the building.

22. I acknowledge that part Q.1.(i) permits the replacement of roofs and exterior walls. However, the wholesale replacement of the existing roof and external walls would result in a substantial amount of rebuilding works. I cannot conclude that the extent of these works would be necessary having regard to the guidance within the PPG. This element of the proposed building operations would go beyond what is reasonably necessary for the building to function as a dwellinghouse and would not, therefore, fall within any of the exceptions listed in part Q.1.(i).

(ii) new openings

23. A number of new openings in each elevation of the building are proposed, including three openings that span both the ground and first floor. Whilst these are extensive, the inspection report confirms that there would be no requirement to alter the existing structural elements of the building to accommodate the proposed conversion³. This may well be the case for the vast majority of the proposed new openings in the building. However, I am not certain that such a conclusion could be reached if the floor to eaves opening proposed in the front elevation is to be achieved as shown on the plans.

24. The location of this new opening would not align with the existing barn door opening, which sits between the two intermediate steel portal frames. Having noted on site the location of these two intermediate portal frames and compared this with the proposed location of the large opening on the front elevation, the vertical support of one of these portal frames would be visible within the opening if, as confirmed in the inspection report, all four portal frames are retained. However, the submitted plans do not show this vertical element of the frame within the front elevation opening.

25. The installation of the large opening on the front elevation is likely to require an alteration to the principle structural elements of the building if it is to be

² PPG paragraph 105 - Reference ID 13-105-20150305

³ Paragraph 4.5 of the Inspection Report by Brian Clancy Higby Partnership reference 18057459/2.03

achieved as proposed on the submitted plans. It is clear that the information before me does not acknowledge this and does not adequately consider this element of the proposed building operations.

26. I acknowledge that the insertion of windows is permitted by Class Q (b) and that the Order does not distinguish between structural and non-structural works in permitting certain building operations. However, for this element of the building operations to fall within the exceptions listed in part Q.1. (i), they must be to the extent reasonably necessary for the building to function as a dwellinghouse. In view of the extent of the new opening in the front elevation and the likely need for structural works to achieve this opening in the manner proposed, I can only conclude that this element of the proposed building operations would go beyond the exceptions listed in part Q.1.(i).

(iii) Internal alterations

27. The plans propose the provision of a first floor within the building. The original inspection report indicated that this would require localized strip foundations to be excavated to support the additional loads⁴. However, an update from the structural engineer has been submitted⁵ which confirms that in all likelihood the existing slab would support the additional loads resulting from the first floor element. The Council have not provided any response to this additional information.
28. Furthermore, the information submitted does not indicate that external alterations are necessary to achieve a first floor within the building. Whilst new window openings at first floor level are proposed, these would not be required to achieve a first floor level.
29. Having regard to the above, I am satisfied that the works to accommodate a first floor within the building are those envisaged in the PPG⁶ as not being development. In this case the works to provide an upper floor would not be prohibited by Class Q of the Order, as the PPG informs.
30. To summarise on the matter of the building operations proposed, whilst I have concluded that the works to accommodate a first floor in the building would not be prohibited, I have found that the remainder of the proposed works referred to above would be building operations that are not permitted by Schedule 2, Part 3, Class Q(b) of the Order.

Conclusion

31. Both elements of the development permitted by Class Q(b) have been considered. I have concluded that the change of use of the building and curtilage is development that would not be permitted by the provisions of Schedule 2, Part 3, Class Q(b) of the Order. For this reason, the proposed building operations would also not be permitted by these provisions.
32. Even if the change of use were permitted in this case, the building operations would still not be permitted by Class Q(b) as certain elements would not be reasonably necessary for the building to function as a dwellinghouse and would not, therefore, conform with the exceptions listed in part Q.1.(i).

⁴ Paragraph 4.4 of the Inspection Report by Brian Clancy Higby Partnership reference 18057459/2.03

⁵ Letter from Peter Higby of Brian Clancy Higby Partnership, dated 22 May 2019.

⁶ Guidance at the end of paragraph 105 of the PPG - Reference ID: 13-105-20180615

33. Accordingly, I conclude that the appeal should be dismissed.

J Moss

INSPECTOR