
Appeal Decision

Site visit made on 11 March 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/L3815/W/19/3241939

Land South of 102A First Avenue, Almodington, Chichester PO20 7LQ

- 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 J Sullivan against the decision of Chichester District Council.
 - The application Ref E/19/02407/PA3Q, dated 18 September 2019, was refused by notice dated 12 November 2019.
 - The development proposed is change of use from agricultural buildings to C3 residential dwellings and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form. It differs from that on the appeal form and decision notice which is "notification for Prior Approval for a proposed change of use of agricultural buildings to 4no. dwellinghouses (Class C3)". My decision is based on this description, since it more accurately describes the appeal proposal.
3. Schedule 2, Part 3, Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015¹ (GPDO) sets out the prior approval process. It states² that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or 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. It was on this basis that the Council refused to grant prior approval.

Main Issues

4. The main issues are:
 - Whether the proposal would be permitted development (PD) under Schedule 2, Part 3, Class Q³ of the GPDO; and

¹ SI 2015 No.596

² Paragraph W.(3)

³ SI 2018 No.343

- If so, whether or not prior approval would be required in accordance with the condition set out in Paragraph Q.2 (1) of the GPDO.

Reasons

Whether the proposal would be permitted development

5. Class Q permits development consisting of (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use. The appeal relates to development under both Q(a) and Q(b), so that the proposal relates to the change of use to residential as well as associated facilitating works.
6. Paragraph Q.1 (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 dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by Paragraph Q.1(i)(i).
7. Paragraph 105 of the Planning Practice Guidance⁴ (PPG) provides further clarification. The guidance 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 into 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 PD right. The PPG also acknowledges that internal works are generally not development and that for the building to function as a dwelling it may be appropriate to carry out internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floorspace permitted, or internal walls, which are not prohibited by Class Q.
8. The appeal site comprises three redundant agricultural buildings, located to the south of First Avenue, which is a private lane. The site is set back behind residential properties and is accessed via a single-width track from First Avenue. It formed part of a wider horticultural unit, and has also been used for agricultural contracting. The Appellant has confirmed that the buildings have been redundant since the agricultural use ceased in January 2010.
9. The proposal is to convert the buildings into four single storey dwellings, comprising a studio unit and three 2-bedroomed dwellings, each with a floor area of less than 100 square metres, comprising “smaller dwellinghouses” under Paragraph Q.3 of the GPDO. The agricultural buildings are referred to as Buildings 1, 2 and 3 on planning application drawing Ref 001, and I refer to them as such in my reasoning.
10. Building 1 is a small prefabricated garage/shed structure comprising concrete panel walls, a concrete floor, timber doors and a timber frame supporting a corrugated sheeting roof. The building is, in essence, a lightweight structure of a size typical of that associated with a small domestic storage building. Whilst Class Q does not include a minimum floorspace requirement, Paragraph 105 of

⁴ Reference ID: 13-105-20180615

the PPG, states that the right permitting agricultural buildings to change to residential use “assumes that the agricultural building is capable of functioning as a dwelling”. The footprint of Building 1 is significantly smaller than that which would normally be associated with a dwellinghouse, being more akin to the size of a double bedroom. Whilst the submitted drawings include a proposed residential studio unit layout, the standard of living accommodation is significantly constrained by the size of the building footprint. As such, the proposed dwelling layout does not persuade me that the existing building is capable of functioning as a dwelling.

11. In making this assessment, I have had regard to the Government’s Nationally Described Space Standards (NDSS) for housing, which the Council has drawn my attention to. The NDSS would require a minimum floor space of 37 square metres in respect of a one bedroom, one person, single storey dwelling. This is around 4 times the size of the proposed dwelling in Building 1. Whilst Class Q does not require compliance with the NDSS, this nonetheless provides a useful gauge in assessing the capability of the building to function as an independent dwelling for the purposes of meeting the requirements of Class Q.
12. I also note that the Report on the Stability and Suitability for Conversion of Barns/Outbuildings by vkhp-consulting ltd (the vkhp report), submitted by the Appellant, queries the size of the building, commenting that it is a small structure and stating that “...we are not sure how with such limited space, the residential aspect would be met..”
13. In any event, the building would need to be capable of conversion to residential use to satisfy the requirements of Class Q. The vkhp report concludes that structurally Building 1 is stable, and that it only requires localised maintenance work in order to provide the primary structural elements for residential conversion. However, notwithstanding this, I find that the building is likely to require significant building works in order to facilitate a dwelling. In particular, I observed during my site inspection that the doors are in a dilapidated condition and have become detached from the building so that the front elevation is completely open, and that the roof is of a lightweight construction. Furthermore, on the basis of the evidence before me, I am not persuaded that the prefabricated concrete panel walls could be retained as part of the facilitation of the residential use.
14. Accordingly, I find that insufficient evidence has been submitted to demonstrate that Building 1, on account of its small size and insubstantial nature, meets the fundamental requirement of Class Q, that it must already be suitable for conversion to residential use.
15. Buildings 2 and 3 are timber framed, with lightweight corrugated sheeting walls and roofs, dirt floors and predominantly open frontages. I acknowledge that the vkhp report concludes that the primary supporting structures, with some repairs, have the loadbearing capacity to support the works associated with providing the new residential units. However, the ability of the existing frame to bear the load of the proposed development is not, in and of itself, sufficient to meet the requirements of Class Q.
16. I also note that Class Q allows for building operations altering external appearance, as well as internal alterations. However, in order to benefit from the PD rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal

must only involve building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i).

17. In this instance an extensive amount of work is required to facilitate the residential units, including the replacement of the roofs and substantial elements of the walls. This would leave very little of the existing building structures remaining. In this respect, I find that the amount of building work required for the buildings to function as dwellings is such that the proposal relies very little upon the existing buildings. Having regard to the High Court judgement in the *Hibbitt* case⁵ and the associated appeal decision⁶, which are referred to in Paragraph 105 of the PPG, these works would exceed what could reasonably be described as conversion and would be so extensive as to comprise rebuilding. This goes beyond what is reasonably necessary for the conversion of the buildings into residential use.
18. Therefore, based on the evidence before me and my own observations of Buildings 2 and 3, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the buildings, so as to be permitted development under Class Q.
19. The Council's second refusal reason relates to the lack of clarity in respect of the individual curtilages for each building. I acknowledge the Appellant's statement that, on the basis of the submitted plans, the proposed combined curtilage for the four dwellings would not exceed the combined footprint of the buildings, having regard to Paragraph X of Class Q. However, notwithstanding the red line on the application drawings, the building curtilages are not expressly defined. Furthermore, no building curtilages were visually apparent on the site at the time of my site inspection.
20. As such, I find that insufficient information has been submitted in respect of the building curtilages to confirm that the proposal accords with the curtilage requirements of Paragraph X of Class Q. However, this is not determinative of my decision, having regard to my aforementioned findings in respect of the extent of building works required to provide the residential units.
21. For the above reasons, I therefore conclude that, based on the evidence before me, the proposed use of Buildings 1, 2 and 3 would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated guidance within the PPG, and therefore is not development permitted by it.

Prior approval

22. In respect of the Council's third refusal reason, given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required, as it would not alter the outcome of the appeal.

Other Matters

23. The site lies within the zone of influence of Pagham Harbour and Chichester and Langstone Harbour Special Protection Areas (SPAs), which are

⁵ 5 *Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin)

⁶ APP/P3040/W/16/3142052 - Dismissed - 19 May 2016

internationally designated sites of nature conservation importance, with special reference to birds. The appeal scheme is likely to have a significant effect in combination with other plans and projects on the SPAs through increased recreational pressure.

24. Article 3(1) of the GPDO grants planning permission for the classes of development described as PD in Schedule 2, subject to Regulations 75 - 78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017, that development which, (a) is likely to have a significant effect on a European site or a European offshore marine site, alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site, must not be begun until the developer has received written notification of the approval of the LPA under Regulation 77.
25. The Council has confirmed that mitigation against recreational disturbance is necessary in respect of additional residential units within the zone of influence of the SPAs, and that this should take the form of a financial contribution secured by a Unilateral Undertaking (UU). The Appellant has confirmed agreement to the payment of the appropriate financial contribution, but I have not been provided with a completed UU.
26. The Regulation 77 application may be submitted and approved after prior approval is given for the development, and would be for the LPA to determine, outside the scope of the prior approval process. As such, and, having regard to my findings on the first main issue, there is no need for me to consider the implications of the proposal on the SPAs.

Conclusion

27. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
28. The appeal is, therefore, dismissed

S Leonard

INSPECTOR