



Appeal Decision

Site visit made on 4 February 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2020

Appeal Ref: APP/W1850/W/19/3241202

Barn at Darnells Farm, Linton, Ross-on-Wye HR9 7SQ

- 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 (as amended).
 - The appeal is made by Mr Graham Chapman against the decision of Herefordshire Council.
 - The application Ref 191155, dated 28 March 2019, was refused by notice dated 16 May 2019.
 - The development proposed is the change of use of an agricultural building to a single dwelling and associated operational development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In considering proposals for development under Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter 'the GPDO'), a determination must first take place as to whether the proposal constitutes permitted development. In the event that it does, Paragraph Q.2(1) of the GPDO requires the local planning authority to assess the impact of the proposed development on a limited number of 'prior approval' matters. The Council raised no concerns regarding the impact of the scheme on these prior approval matters.
3. The application was refused on the basis that the proposal would not be permitted development, for two reasons. Firstly, that the scale of building operations required to convert the building into a dwelling would go beyond what would sensibly or reasonably be described as conversion, and that the proposal was therefore excluded from being permitted development by the requirements of Paragraph Q.1.(i). Secondly, that the dimensions of the building would be extended, and that the proposal would therefore fail to comply with the requirement of Paragraph Q.1.(h). The information submitted with the application also raised the question of whether the curtilage for the proposed change of use exceeded the restrictive limit described in the GPDO. Although this was not one of the reasons for which the Council refused the application, it is therefore a matter which I will also address in determining the appeal.

Main Issue

4. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO.

Reasons

Curtilage and change of use

5. The appeal site is part of a farm which in recent years has diversified, including through providing residential accommodation for rental in various outbuildings. The current proposal seeks prior approval for the use of an agricultural building as a two-bedroom residential unit, along with the building operations required to enable the building to be used as a dwellinghouse.
6. Paragraph X of the GPDO provides interpretation for Part 3 in which 'curtilage' means, for the purposes of Class Q, R or S only, (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.
7. The submitted application included a location/block plan (drawing reference 2-1) showing the buildings for which the change of use is proposed, with a red line boundary encompassing additional land to the eastern side. I take this red line as showing the curtilage of the intended change of use. The proposed site plan (drawing reference 2-3) indicates that the external land within the red line boundary has an area of around 105m², and that it would be used as a garden for the proposed dwelling. The proposed change of use is to a 'smaller dwellinghouse' which, by definition, must have a footprint of less than 100m². The information submitted with the application therefore indicated that the curtilage is larger than the footprint of the agricultural building, and so the change of use would not be permitted under the GPDO.
8. While this was not a matter which the Council referred to in their decision notice, it is fundamental to whether the proposed development is permitted by Class Q. I therefore sought comments from both parties during the course of the appeal. The appellant confirmed that the barn has a footprint of just under 100m², but indicated that the plans were intended to be 'outline only' and that the garden was shown 'for illustrative purposes only'. The appellant also proposed that only the footprint of the barn itself should be considered as the curtilage of the proposal.
9. Both the original planning statement which formed part of the application, and the subsequent appeal statement refer to the external area being landscaped to provide domestic amenity space. In my view the scheme as submitted is clearly dependent on the use of this land, both for access to the proposed dwelling through its only external door, and as a garden or courtyard from where the occupiers could enjoy the views across the rolling countryside to the east, as shown in the proposed floor plan (drawing reference 2-4). While I accept that the area of curtilage might be amended to be no greater than the area of the building, it is not the purpose of the appeal process to evolve a scheme. It is important that the facts before me are essentially those

considered by the Council and others, and while the Council has had the opportunity to comment on this matter others have not.

10. Under these circumstances, I have made my decision on the basis of the evidence and plans as originally submitted and the appellant's appeal statement, and have given the appellant's subsequent comments only limited weight in the balance of this appeal. I therefore conclude that the proposal does not comply with the restrictive definition set out in Paragraph X, and so cannot be regarded as permitted development under Schedule 2, Part 3, Class Q of the GPDO.

Building operations

11. Class Q(b) of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a dwellinghouse, together with specified building operations reasonably necessary to convert the building to such a use, subject to the proposal complying with other requirements set out in the GPDO. As I have found that the change of use proposed is not permitted, it follows that the building operations would also not be permitted. Notwithstanding this, and for completeness, I have also considered the matters of dispute between the parties.
12. The existing structure for which the change of use is proposed is a barn with an attached 'lean-to' store at its northern end. One end and one side of the barn are open to the elements, while the other end and side are formed of coursed random rubble stone walls. The steel framework for the barn's metal-panelled barrel roof is supported by the side stone wall, and on timberwork propped by two intermediate posts on the open west side. The floor of the building is compacted earth. Although the side stone wall is partly overgrown with vegetation and has a large hole where the base of a window opening has collapsed, the Condition Report submitted with the application concluded that the walls are in a reasonable condition and, subject to remedial work and the use of a lightweight construction method for the 'inner skin' of the wall structure, they could be retained for use in a conversion. It also indicated that the existing roof covering would need to be replaced, and a new insulated concrete floor installed, to meet current standards. However, the Condition Report does not specifically address the proposed details of the scheme now before me.
13. Paragraph Q.1(i) of the GPDO lists the building works permitted to facilitate the change of use of an agricultural building to a dwellinghouse. These are the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services, as well as partial demolition to the extent reasonably necessary to carry out these building operations. The Planning Practice Guidance (the PPG) provides further information in that regard, by stating that the right assumes that the agricultural building is capable of functioning as a dwelling¹. The PPG adds that it is only where the existing building is already suitable for conversion to residential use that it would be considered to have the permitted development right.
14. The proposed works in this case include the retention and repair of the barn's two existing stone walls, albeit with some alterations to allow for the

¹ Paragraph 105 – Reference ID: 13-105-20180615

installation of windows and doors. It is also proposed to retain the barrel roof's supporting steel framework. However, although the appellant has indicated that no additional foundations or structural works are required, the submitted Proposed Elevations (drawing reference 2-5) show three new posts supporting the roof replacing the existing two timbers on the west elevation. No details are provided of the type of new floor proposed, the extent of excavation which may be required for its installation, or whether there would be any effect on the existing foundations, which the Condition Report indicates are likely to be shallow.

15. Furthermore, the Condition Report did not refer to the northern 'lean-to' extension at all, and it is only referred to in passing in the Planning Statement. At present it consists of little more than metal sheet roofing on timber joists supported between the stone end wall of the barn and an adjacent concrete-framed storage building, and partly enclosed with timber and metal sheeting affixed to supporting posts. The development would see this element connected to the main barn to provide a second bedroom and a cloakroom/shower room, with a new floor and walls installed. The submitted Proposed Elevations also indicate that the eaves on its eastern elevation would be raised, and a new sloping roof installed which would, at least in part, be at a higher level than the present roof.
16. The Council referred me to the High Court judgment in the *Hibbitt* case² in which it was held that, for the permitted development rights under Class Q(b) to apply, the building must be capable of conversion to residential use without operations that would amount to a rebuild of the existing structure or a fresh build, as such works would go beyond what could be considered a conversion. I acknowledge that there are differences between the building in *Hibbitt*, which was a steel-framed barn open on three sides, and that in the case now before me. Nonetheless, *Hibbitt* sets principles which are applicable to this appeal, not least that it is for the decision maker to exercise judgement in each case by considering the type and extent of works proposed.
17. I acknowledge that elements of the proposed works are among those specified in the GPDO, and that the existing stone walls of the main barn would be retained and repaired. However, on the basis of the evidence submitted and my own observations on site, I consider that the building requires significant works in order to facilitate its conversion to a dwelling, including the provision of a new floor, an insulated roof, two new external walls to the main barn and new supports for the barrel roof framework, as well as the substantial reconfiguration and expansion of the 'lean-to' store. In my view these are cumulatively so extensive that they would be more akin to a rebuild than a conversion of the existing buildings.
18. I therefore conclude that the proposed development would not satisfy the requirements of Paragraph Q.1.(i) of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated advice within the Planning Practice Guidance, and is not therefore permitted by it.

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

Building dimensions

19. Paragraph Q.1.(h) of Schedule 2, Part 3, Class Q of the GPDO states that development is not permitted where it would result in the dimensions of the building extending beyond the external dimensions of the existing building at any given point.
20. Because the eaves of the 'lean-to' extension would be raised and its new sloping roof would be at a higher level than the existing roof, the development would result in this part of the building being extended beyond its existing dimensions.
21. As a consequence, I conclude that the proposed development would not satisfy the requirements of Paragraph Q.1.(h) of Schedule 2, Part 3, Class Q of the GPDO, and is not therefore permitted by it.

Other Matters

22. The appellant raised other points in support of the proposal, including the demand for one and two-bedroom residential rental property in the area, as well as the scheme providing a means of preserving the existing barn which is understood to be the oldest building on the farm. However, these are issues which fall outside the limited scope of matters which can be considered in determining an application under Schedule 2, Part 3, Class Q of the GPDO, and they therefore do not weigh in favour of the proposal.

Conclusion

23. For the reasons given above, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. It is development for which an application for planning permission would be required.
24. The appeal is therefore dismissed.

M Cryan

Inspector