



Appeal Decision

Site visit made on 30 June 2020

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/R1038/W/20/3246549

Bacon Springs Farm, Mill Lane, Clay Cross, Chesterfield S45 9AN

- 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 Tyrone Brooks against the decision of North East Derbyshire District Council.
 - The application Ref 19/01117/CUPDMB, dated 11 November 2019, was refused by notice dated 6 January 2020.
 - The development proposed is change of use of agricultural barn at Bacon Springs Farm to form two dwellings with associated parking and curtilage areas including operational development to convert the building.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the General Permitted Development Order (GPDO).

Reasons

3. 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 (dwelling houses) of the Schedule to the Use Classes Order and any building operations reasonably necessary to convert the building.
4. 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.
5. Paragraph 105 of the Planning Practice Guidance (the PPG) provides further clarification. The guidance states that it is not the intention of the permitted development right to include the construction of new structural elements for

buildings. Therefore, it is only where the existing buildings are structurally strong enough to take the loading which comes with the external works to provide for residential use that the buildings would be considered to have the permitted development right.

6. The Council considers that the barns would not be structurally strong enough to take the loading which comes with the external works to provide for a residential use. Clearly the case involves matters of judgement. However, despite the submission of a summary structural report from the appellants, I find this to be vague and equivocal and therefore the lack of detail means that there is considerable doubt in my mind as to whether the existing building frames are capable of taking the loading associated with the new works. I consider that on the balance of probabilities, the building is incapable of conversion.
7. The Council referred me to the High Court judgment in the *Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2863 (Admin)) 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.
8. I acknowledge that elements of the proposed works are among those specified in the GPDO. 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 roof and flooring. In my view these are cumulatively so extensive that they would be more akin to a rebuild than a conversion of the existing buildings.
9. For the above reasons, I conclude that the proposal would not comply with the limitations and restrictions specified as being applicable to the proposed development. As such, it could not benefit from deemed permission under Class Q.
10. I have noted the revised curtilage plan that has been submitted in order to address the reason for refusal in relation to the curtilage of the building and note that the Council have not raised issues to the revised layout. Therefore, I am satisfied that the revised plan addressed the issue and I will not assess the issue any further.

Other Matters

11. I have noted the previous approval on site, and that the decision was made after the *Hibbitt* case. However, regardless of the interpretation made at that time, I am duty bound to take the case and the subsequent case law into consideration, and I have made my decision accordingly. As the previous approval has lapsed, I cannot assign any significant weight to it.

Conclusion

12. 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.
13. The appeal is therefore dismissed.

Paul Cooper

INSPECTOR