



Appeal Decision

Site visit made on 16 July 2020

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal Ref: APP/J1860/W/20/3249818

Barn at (SO 77827 65521), Hillhampton Farm, Great Whitley WR6 6RP

- 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 Nigel Drew against the decision of Malvern Hills District Council.
 - The application Ref 19/01864/GPDQ, dated 13 December 2019, was refused by notice dated 7 February 2020.
 - The development proposed is a notification for prior approval for a proposed change of use of agricultural building to a dwellinghouse (Class C3), and for associated operational development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal relates to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDQ). Class Q (a) 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 3 (dwellinghouses) of the Schedule to the Use Classes Order¹. Class Q (b) permits development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. The Council considers that the proposal would exceed the limitations relating to Permitted Development under Class Q, (b) as well as Part Q.1 (h) and (i). Additionally, the interpretation of curtilage allowed by Class Q (a) is disputed. The Council also references the effects to the character and appearance of the building and the resultant living conditions for future occupants as being harmful. Any proposal which is not Permitted Development cannot be subject to the prior approval process as it would need full planning permission. Therefore, issues relating to the merits of the prior approval application are only relevant if the proposal would be Permitted Development.

¹ The Town and Country Planning (Use Classes) Order 1987 as amended.

4. The reasons for refusal of the Council also include that it was unable to fully assess the effect of the proposal and refused the application based on insufficient information under Part 3, section W (3) of the GPDO.

Main Issue

5. The main issue is whether the proposal would fall within the limitations for it to be Permitted Development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the building to be converted and used as a dwelling, also having regard to its curtilage.

Reasons

Whether or not the works would amount to a conversion

6. Paragraph 105 of the Planning Practice Guidance states that the Class Q right assumes that the agricultural building is capable of conversion to a dwelling. It is therefore not the intention of Class Q to allow rebuilding works which would go beyond those 'reasonably necessary'.
7. My attention has been drawn to an appeal referring to the Hibbit Case² which relates to the difference between conversions and rebuilding dealt with under Class Q. This is important because if a development does not amount to a conversion it would fail to be development permitted under Class Q (b). The case suggests that an agricultural building may be so skeletal and minimalist that the works needed to alter it to be used as a dwelling would be of such a magnitude that it would be tantamount to a new build or rebuild.
8. The appeal building is a steel portal framed barn within an arched roof and a large central opening. The barn adjoins a larger central barn and because of that has shared internal wall on one side. At my site visit I could see that timber framing was present either side of the opening. The metal structural uprights and framing to the building was exposed on its front and right-hand side. Internally, the roof sits on a metal lattice linked to the structural metal uprights. The rear elevation comprised of a single storey lean to constructed from blockwork and corrugated metal sheets for its roof. The majority of the building had plywood lining on the interior which was largely exposed owing to no exterior wall lining on the majority elevations. The appeal plans are consistent with what I observed.
9. The appellant's submitted structural survey concludes that the building is structurally sound and capable of being converted without any significant structural works. It indicates that a new insulated floor slab on top of the existing concrete slab could be undertaken. The Council does not dispute the buildings structural integrity but questions if the existing fabric of the building can be retained in a way which prevents the building works required from falling outside the scope of ordinary conversion.
10. Whilst the survey does conclude the building could be converted without significant structural works it is apparent that the alterations proposed are likely to involve a significant overhaul of the existing fabric of the building. This would include stripping back the existing roof sheeting as well as providing new

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

exterior lining to the building and replacement of the internal plywood walls which have been exposed to the elements. It would also include the demolition of the shared internal wall with the adjoining barn.

11. The extent of the works needed to alter the building for dwelling house use would result in new external facing to all its elevations. I would also expect that the existing plywood internal lining due to long term exposure to the elements would need to be stripped out and replaced along with providing adequate insulation for all its elevations. The metal skeleton structure to be retained would then be the base for new brick slips as the external cladding and insulation behind.
12. Because of the building's minimal, exposed portal frame and roof format, I have considerable doubts it was designed to be clad over on the front, rear and sides to the extent proposed in the plans and it is impracticable to do so without extensive operational building works being involved. I have assessed the plan and supporting information provided but it does not convince me that the dimensions of the building would not increase as a result of the works. But even if the dimensions of the building did not increase the works required to put exterior walls on all sides of the building would still be considerable.
13. The question of whether the existing barn is capable of conversion rather than constituting a new or rebuild lies at the heart of the matters contested by parties. Based on the evidence before me it is likely that only the minimum steel portal skeleton of the barn would be left intact owing to the inadequacy of the existing fabric of the building to be retained for a dwelling house use. The works in totality would be more akin to a new or rebuild rather than a conversion. The proposal would therefore involve operational development which goes beyond that which is Permitted Development and there is no substantive evidence before me to conclude otherwise. Accordingly, the proposal fails on point Class Q (b) for the reasons given above.

Curtilage

14. For the purposes of development allowed under Class Q (a) Paragraph X of the Order is also relevant. The definition given in Paragraph X is that "curtilage" means 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; 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. "Site" means any building and the land within its curtilage.
15. The area of land indicated with a red edge on the appeal site plan and the proposed floor plan would be able to meet the definition of curtilage within Paragraph X, albeit not in its entirety discounting the area where natural planting would replace part of an existing building shown to be demolished. The area concerned is not presently severed from adjoining land with a continuous boundary. I accept the larger separate area edged in blue on the plans could potentially serve occupants of the proposed dwelling through boundary separation from existing agricultural uses. The Council calculates that the areas combined would equate to approximately 1570 square metres of land serving the appeal building, far exceeding its floor area. However, the amount of curtilage around the building subject to change of use indicated within the drawings and information before me suggests it would be within the limitations

of what Class Q allows. Moreover, the access track serving the site already exists and is not new development.

Other Matters

16. I note that prior approval was given by the Council for the building to be converted to a dwelling house in 2015 under application reference 15/01065/PDU. However, that approval is no longer extant and pre-dates the Hibbert judgment. Taking the proposal before me on its merits, I have found that it would not be Permitted Development for the reasons explained above.
17. The appellant has referred me to several appeal decisions³ to support his case. Whilst there are some similarities shared with the appeal scheme in examining the issue of what constitutes Permitted Development, the examples relate to a variety of individual case judgements covering a range of building specific operational development matters which are informed by supporting case information and therefore not directly comparable. In any event, I have determined the appeal on its own merits based on the information before me.

Conclusion

18. Whilst I have not found issues of curtilage prevent the proposal from being Permitted Development, I have found that the building works involved would go beyond a scheme for conversion. On that basis the proposal is not Permitted Development under Class Q.
19. For the reasons given above the appeal is dismissed.

M Shrigley

INSPECTOR

³ APP/R1038/W/18/3200789; APP/C2708/W/18/3195602; APP/G1630/W/17/3189968; APP/K3415/W/15/3134959; APP/X1118/W/19/3228101; APP/P1045/W/15/3070040