

Appeal Decision

Site visit made on 11 August 2020

by M Scriven BA (Hons) MSc CMgr MCIHT MCMi

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal Ref: APP/P1133/W/20/3249997

**Undercleave Barn, Abbotsbridge Drive, Ogwell, Newton Abbot, Devon
TQ12 6YS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 & Mrs O'Neill against the decision of Teignbridge District Council.
 - The application Ref 19/02075/NPA, dated 14 October 2019, was refused by notice dated 11 December 2019.
 - The development proposed is the conversion of the existing building and land with its curtilage to form a single dwelling.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of the existing building and land within its curtilage to form a single dwelling in accordance with the application 19/02075/NPA made on 14 October 2019, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr O'Neill against Teignbridge District Council. This application is the subject of a separate Decision.

Procedural matters

3. I have determined the appeal on the plans provided. For clarity I have used the description of the development as referred to by the appellant and Council, which differs to that on the application form.
4. The proposed bat roost referred to by the appellant has been granted planning permission (ref 20/00665/FUL). Notwithstanding the appellant's view that this should lift a reason for refusal, no such confirmation has been provided by the Council. I have therefore dealt with the matter in my reasoning below.

Main Issues

5. The main issues are:
 - Whether the proposed development meets the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted

Development) (England) Order 2015 (as amended) (the GPDO), with particular regard to whether the building operations and partial demolition of the building is reasonably necessary for the building to function as a dwellinghouse and;

- The effect of the proposed development on protected species of bats.

Reasons

Structural works

6. The appeal relates to a large barn located at the outer edge of Ogwell, the barn is positioned cut in to the hillside and is constructed of a mixture of stone, cob, timber and concrete block work under what appears to be corrugated steel and asbestos roofing. The floors of the barn are of sloping concrete running from the front elevation to the main space of the barn which sits elevated above.
7. The barn appears to have been added to over time at either end with lean to extensions, similarly a low level extension has been added to the front elevation. The front extension roof follows that of the main barn supported by granite pillars and timbers.
8. From the evidence before me the issue in contention relates to the requirement in paragraph Q.1(i) of the GPDO Schedule 2, Part 3 that the conversion works be no more than "reasonably necessary for the building to function as a dwelling house".
9. The structural report provided identifies deficiencies in the structure including fracturing of the cob to the north east corner of the gable and an area above an infilled opening on the rear elevation. The report also identifies that timber lintels in the front elevation are in need of replacement to conform with building regulations requirements. Similarly, upgrade would be required of other structural elements of the building to conform with current building regulations. These matters were all apparent at the time of my visit. I was unable to access the western part of the barn as the first floor had partially collapsed however external viewing of the wall concurred with that of the structural report, that it appeared in reasonable condition.
10. Although not specifically referred to by the Council, the appellant has provided reference to the Hibbert Case¹ where it was held that "the works went a very long way beyond what might sensibly or reasonably be described as a conversion" and that "the development was in all practical terms starting afresh, with only modest help from the original agricultural building".
11. In this instance I have little substantive evidence from the Council, to suggest how the works required are not that which would be reasonably expected in the proposed conversion of the barn to a dwelling. Reference is made to a previous structural report considered by the Council. However, it has not been provided and the evidence submitted for the appeal is a more recent appraisal of the building. In the absence of any further detail or structural surveyor's view to demonstrate the contrary I am not of the view that such works would not be unreasonable or amount to starting afresh but rather upgrading what is in situ.

¹ Hibbert & Another v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin)

12. I acknowledge that a reasonably large area of cob on the rear wall requires repair or replacement. However, this sits above an opening which would be replaced with glass and require taking down and reinstatement. Other identified areas of fracturing would appear to be repairable rather than starting afresh.
13. Much of the roof coverings would require replacement, as well as some replacement of timber lintels and purlins, this though does not constitute rebuild. Likewise, I am not of the view the works to the floor would constitute structural rebuild but rather levelling and insulating to facilitate residential use, I have no evidence of new foundations being proposed or the need for large sections of wall to be replaced in totality amounting to starting afresh.
14. The Council's Area Surveyor confirmed that the barn was suitable for conversion from a building control point of view. I accept that this does not constitute the proposal's accordance with the GPDO, however this does not lead me to a different conclusion with regard the reasonableness of the works required.
15. I therefore consider the works required to be reasonably necessary for the building to function as a dwelling house.
16. Although not an objection to the proposal the Officer's report makes reference to the access of the proposed development being unclear. However, from the evidence before me I have no reason to consider that access to the barn would be unachievable given the existing access track, parking arrangements and pathways on the wider site within the ownership of the appellant.

Effect of the development of protected species of bats

17. Article 9 of the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations) imposes a duty on decisionmakers to consider the relevant Directives and whether there is a reasonable likelihood of Protected Species being present and affected. As a consequence, this is a consideration for development that is said to be permitted development, in a prior approval or other appeal. As the proposal relates to conversion of the existing barn there is no opportunity to undertake the proposed development elsewhere.
18. The Mitigation Method Statement – Bats, identifies that the building supports protected bat roosting, including Horseshoe bats. Without appropriate mitigation the protected species would be harmed as a result of the conversion as the roost would be lost. The appellant has provided a mitigation strategy incorporating a replacement bat roost at the edge of a wooded area above the site and further bat boxes close by. I have no evidence before me to demonstrate that the mitigation strategy would not be sufficient to mitigate the harm identified. Although not referred to by the Council, I also consider the appeal proposal to not adversely effect the nearby SSSI's given its distance from the site.
19. Notwithstanding the view of the Council that a replacement roost box could not be dealt with as part of the application, it would have been appropriate for such a matter to be the subject of a pre-commencement condition if considered appropriate mitigation to an otherwise allowable development. Such a condition would not have bound the Council to grant any decision on planning permission regarding the specifically proposed roost box. However, the Council did not

consider the proposed development to be acceptable with regard the structural works required.

20. During the appeal process the proposed roosting box was granted planning permission by the Council ref 20/00665/FUL, subject to conditions on the land of the appellant. Notwithstanding this, the proposed roost box and other mitigation measures contained within the report would still need to be in place and of satisfactory standard prior to works commencing on the building, to ensure no harm to bats. I also consider it appropriate for any intended external lighting of the proposed dwelling to be the subject of agreement between the Council and appellant to ensure no harm to bats.
21. I therefore consider the proposals contained within the Mitigation Method Statement - Bats to sufficiently mitigate the harm identified to the protected species.

Conditions

22. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of 3 years starting with the prior approval date, so it is not necessary or reasonable to impose a separate time limit as requested by the Council.
23. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity, it is necessary to impose a condition regarding compliance to the approved plans. Likewise, it is necessary to include a pre commencement condition in relation to the provision of bat mitigation measures in the interests of biodiversity and protected species.
24. A condition regarding external lighting is required to safeguard foraging routes of protected bats. These conditions are based on that proposed by the Council and subsequently agreed by the appellant, minor amendment has been made for clarity.
25. Although the Officer's report states that environmental health have previously confirmed they do not suspect the site to be contaminated they did recommend a condition relating to how any contamination should be dealt with. However, no condition has been proposed, as such I have written a condition considered to be reasonable to deal with the concern. No objections to the proposed condition were made by either main party when comments were sought.

Other matters

26. Previous planning applications for the wider site have been referred to by third party representation, I have considered the appeal on its own merits and with regard to all matters raised.
27. Representation has been received regarding the perceived effect of the development on a neighbour's loss of privacy and overlooking. The barn sits within the grounds of a farmhouse, the land above the neighbour's rear boundary is already available for the use of the farm and is not part of the application. Similarly, when viewed from within the proposed development the positioning of windows would be such that there would be little scope to afford views to the near neighbours' rooms or gardens.

28. Third party concern has been raised regarding the proposed appearance of the building. The proposed design largely reflects and improves the current appearance of the building and it would be reasonable to expect that any future use of the site, be it residential or agricultural, would change the appearance of the building. The demolition of the lean to at the rear of the barn would enhance the appearance of the building, albeit not apparent from the front elevation.
29. As the proposed development is the conversion of an existing building I do not consider that it would exacerbate existing drainage issues referred to by the neighbour, nor has such evidence been submitted that it would. Similarly, I have no substantive evidence before me to consider that the conversion of the building would result in unacceptable usage, noise or traffic levels. The availability of other housing sites is not a matter for consideration in this case.
30. Concern has been raised regarding the lighting of the proposal. I do not consider that internal lighting would adversely effect neighbours given the positioning of proposed windows. However, a condition relating to any intended external lighting has been placed on the approval for the purposes of bat protection.
31. Photos have been provided of wildlife in the garden of the existing farmhouse. However, the proposed development relates to the existing curtilage of the barn. Therefore, with the exception of bats referred to above, I do not consider this and other matters raised to effect the outcome of the appeal.

Conclusion

32. For the reasons given above the proposal is a conversion permitted by Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO and the appeal is allowed.

M Scriven

INSPECTOR

****Schedule of Conditions****

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans listed below:
 - Drawing Number S1 Rev. C - Site Location Plan
 - Drawing Number PL4 Rev. C - Proposed Site Plan
 - Drawing Number PL5 Rev. C - Proposed Plan and Section
 - Drawing Number PL6 Rev. C - Proposed Elevations
- 2) The works associated with the development hereby permitted, including demolition shall proceed in strict accordance with all the precautions and measures described in the approved Mitigation Method Statement - Bats (by David F Wills Ecological Consultant, dated 15 February 2019).
- 3) Demolition or other works to the barn shall not commence until the stand-alone bat roost (ref 20/00665/FUL) and other proposed bat boxes have been erected and are available for use by bats displaced by conversion of the barn, to the written satisfaction of the Local Planning Authority. The applicant shall provide the following to the Local Planning Authority; photographs of the completed stand-alone bat roost and bat boxes in situ, and a letter from an appropriately qualified person confirming that the required measures have been put in place to a satisfactory standard. Within 21 days of receipt the Local Planning Authority shall confirm their satisfaction, or otherwise, with regard the completed bat mitigation works.
- 4) Prior to the installation of any external lighting on the outside of the building, full details including design, siting and illumination-type shall be submitted to the Local Planning Authority for approval. Only lighting that has been approved in writing by the Local Planning Authority shall be installed.
- 5) If, during the course of development, any contamination is found, work shall be suspended and measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the Local Planning Authority.

*****Ends*****