
Appeal Decision

Site visit made on 15 September 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 September 2020

Appeal Ref: APP/D0840/X/19/3241734

The Barn, Coosebean Lane, Truro, Cornwall TR4 9EB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs J Solomon against the decision of Cornwall Council.
 - The application Ref PA19/06782, dated 4 August 2019, was refused by notice dated 18 November 2019.
 - The application was made under section 192(1)(a) and (b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a LDC is sought is use as a dwellinghouse.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. An application for costs was made by the Council against the Appellants. That application is the subject of a separate Decision Letter of even date.

Background

3. In August 2015, the Appellants applied for Prior Approval of the proposed change of use of The Barn to a dwellinghouse.¹ The Council refused, and the Appellants appealed against that refusal.² The Inspector who determined the appeal held that the relevant provisions of the GPDO³ countenanced two distinct circumstances: (a) the change of use of an agricultural building to a dwelling, and (b) building operations reasonably necessary for the conversion of that building. The application having been made in respect of (a) only, and not (b), the Inspector determined that the appeal should be allowed on that basis: that is, for the proposed change of use.
4. In August 2018, the Appellants applied for Prior Approval in respect of both (a) and (b): that is, the change of use of The Barn to a dwellinghouse, and for associated operational development.⁴ The Council refused, and the Appellants appealed against that refusal.⁵ The Inspector who determined the appeal held that since the Appellants did not receive the Council's notification of refusal

¹ Ref PA15/07618

² Ref APP/D0840/W/16/3144349, decision dated 19 July 2016

³ Paragraph Q of the *Town and Country Planning (General Permitted Development) Order 2015*, which by the time of the appeal had replaced Paragraph MB of the *Town and Country Planning (General Permitted Development) Order 1995*, under which the application had been made.

⁴ Ref PA18/08021

⁵ Ref APP/D0840/W/18/3217830, decision dated 2 May 2019

within the statutory 56 day period, the GPDO granted deemed approval. He explained that his decision did not include any conclusion as to whether the proposed operational development associated with the residential conversion would fall within the limitations of the GPDO, and pointed out that if it did not, then despite the deemed approval, the proposal would not constitute Permitted Development.

5. On 8 May 2019, having received the appeal decision, the Council wrote to the Appellants setting out its view that the proposed works to convert the building would not fall within the limitations of the GPDO. It advised that if the Appellants took a different view, they should consider applying for a Certificate of Lawfulness (LDC) before commencing work on site.
6. This the Appellants did, and that application is now the subject of this appeal. While the proposed development was described as “change of use to dwellinghouse” (which falls within part (a) of the relevant provisions of the GPDO), the application form made it clear that the development proposal included the carrying out of building operations (which fall within part (b) of the relevant provisions of the GPDO). The Council decided the application on the basis that an LDC for both the proposed change of use and the associated operational development was sought, and I have determined this appeal on the same basis.

The main issue

7. The main issue in this appeal is whether the building operations here proposed fall within what is permitted by Class Q of the GPDO.
8. In determining whether or not a LDC should be issued, my assessment is confined to whether the development described in the application would be lawful if instituted at the date of the application for the LDC.⁶ This means, as the Appellants rightly point out, that the planning merits of the proposal (such as its accordance or otherwise with policies promoting the diversification of farms) can have no bearing on my decision. But it is important to be clear that the physical structure and condition of The Barn, and the extent of the works necessary to effect its proposed residential conversion, cannot be disregarded, as the Appellants contend, as relevant only to the planning merits of the proposal. Rather, consideration of these matters is integral to determining whether or not the proposal complies with the provisions of Class Q.

Assessment

9. The Government’s published *Planning Practice Guidance* (PPG) contains helpful advice on the building operations permitted under Class Q. It explains that the Permitted Development right assumes that the agricultural building is capable of functioning as a dwelling: it is not its intention to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to 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 permitted development right. The PPG then provides a link, “for a discussion of the difference between conversions and rebuilding”, to the High Court’s judgment in *Hibbitt*.⁷

⁶ Per Section 192(2) of the Town and Country Planning Act 1990

⁷ *Hibbit & Another v SSCLG and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin)

10. That judgment found that there was a logical distinction between a “conversion” and a “rebuild”, and that the latter would not fall within the provisions of Class Q. It held that there would be instances where the agricultural building at issue might be “so skeletal and minimalist” that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality, what is being undertaken is a rebuild.
11. The Barn here at issue has a timber frame, clad with a combination of corrugated metal sheeting and timber boarding, and an earth floor. I saw at my site visit that some elements of the timber frame are distorted, and some are showing signs of decay.
12. When applying for a Certificate of Lawfulness, and when contesting the Council’s refusal to grant such a Certificate, the burden of proof rests with the Applicant. The Appellants in this case have provided very little information to support their argument. The plans which were submitted with the application are for a two-storey, three-bedroom house but do not provide any detail as to how this would be achieved. There is no information as to how much, if any, of the existing barn would be retained, and no evidence, such as a structural report, to demonstrate that the existing structural elements would be capable of supporting the weight of the new roof and new intermediate-level floor.
13. The Appellants’ case, as I understand it, is that in confirming that the lack of timely notification of the Council’s refusal had resulted in deemed approval of the proposed development, the 2018 Appeal Decision effectively enabled the scheme to be implemented as submitted. However, as the Inspector who wrote the 2018 Appeal Decision was careful to clarify, a grant of prior approval (deemed or otherwise) does NOT mean that the works proposed necessarily constitute Permitted Development. In order to qualify as Permitted Development, it is essential that such works fall within the limitations and conditions of Class Q of the GPDO. The Inspector clearly explained that he had not reached any conclusions on whether or not they would.
14. Having regard to the skeletal and dilapidated nature of the existing structure, and the absence of any evidence that any elements of it could be stabilised and retained, it seems to me that the building operations that would be required here to create a habitable two-storey dwelling are likely to be extensive. In my judgment, these works would amount to a rebuild of The Barn, rather than its conversion. They would not, therefore, constitute development that is permitted by Class Q of the GPDO as “building operations reasonably necessary to *convert* [my emphasis] the building” to a dwellinghouse. This means that the proposed development could not lawfully be carried out as Permitted Development. It would require a grant of planning permission.

Conclusion

15. For the reasons given above I conclude that the Council’s refusal to grant a Certificate of lawful use or development in respect of the proposed development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Jessica Graham

INSPECTOR