



Appeal Decision

Site Visit made on 13 October 2020

by Gemma Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2020

Appeal Ref: APP/W1525/W/20/3244803

Barn At Chalk End Farm, Farmbridge End Road, Chelmsford, CM1 4LG

- 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.
 - The appeal is made by George Askew Farms Ltd against the decision of Chelmsford City Council.
 - The application Ref 19/01853/CUPAQ, dated 8 November 2019, was refused by notice dated 6 January 2020.
 - The development proposed is change of use of an agricultural building to a dwellinghouse (Use Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits development consisting of Q(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule of the Use Classes Order, and Q(b) building operations reasonably necessary to convert the building.
3. Schedule 2, Part 3, Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out the prior approval process. It states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.

Main Issues

4. The main issue in this case is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, having particular regard to:

- whether the building operations proposed are reasonably necessary for the building to function as a dwelling house and, if those requirements are met;
- whether the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building.

Reasons

5. The GPDO states at paragraph Q.1(i) that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or external walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations.
6. The Planning Practice Guidance (PPG) states at paragraph 105 that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. In this respect, building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission, would be permitted. However, the PPG clarifies that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. It is only where the existing building is already suitable for conversion that the building would be considered to have the permitted development right.
7. The appeal relates to a metal framed agricultural building which has cladding at one end with corrugated sheeting to the roof. The building is entirely open on three sides. The proposal is to convert the building to a dwelling. This would involve the removal of the existing timber cladding and its replacement with horizontal timber cladding attached to the inside of the steel structure. The existing structural frame would remain in place and provide the main load bearing element of the building. The existing roof would be replaced with a zinc roof with internal insulation. The existing concrete floor would be retained.
8. The main parties have referred me to the Hibbitt¹ judgement, which considers the interpretation of "reasonably necessary" in Class Q. In Hibbitt, it was held that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. It also provides a detailed assessment of the differences between conversion and re-building.
9. In this case, the appeal building is similar to that considered as part of the Hibbitt judgment. The Hibbitt building had open sides and it was mainly because of this that the extent of the works needed meant that the proposal would not be a conversion. The judge in the Hibbitt case stated that there will be numerous instances where the starting point (the "agricultural building") might be so skeletal and minimalist that the works needed to alter the use to a

¹ Hibbitt and another v Secretary of State for Communities and Local Government, Rushcliffe Borough Council [2016] EWHC 2853 (Admin).

dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild.

10. The judge in the Hibbitt case indicated it is a matter of judgment, for the decision maker, to establish in each case where the line is drawn, by considering the type and extent of the works proposed in terms of whether a proposal amounted to a conversion rather than a re-build.
11. Taken as a whole, I consider the existing building would not be able to function as a dwelling. The works required would be significant, as they result in the construction of external walls and are necessary to alter the original appearance and purpose of the building. I consider that the works outlined result in the substantial re-building of the pre-existing structure and cumulatively, the extent of the works required would extend beyond the building operations reasonably necessary to convert the building to residential use under Class Q.
12. In order to benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must involve only building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i). Based on the evidence before me, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q.

External Dimensions

13. Paragraph Q.1 of the GPDO contains a list of exclusions as to when development would not be permitted under Class Q. This includes paragraph Q.1(h) which states that development is not permitted where it would result in the external dimensions of the building extending beyond the existing building at any given point.
14. The existing roof is clad with fibre cement roof sheeting and it is proposed that this would be removed and replaced with standing seam insulated roof panels. The appellant has confirmed that the standing seam roofing would be the same thickness as the existing fibre cement roof sheeting and the insulation would be between the purlins and therefore no increase in height would occur.
15. However, a comparison of the submitted elevations for the existing barn and proposed dwelling indicates a difference in the overall ridge height and therefore there is insufficient information to establish that the works required would not result in the external dimensions of the building extending beyond those of the existing building.
16. Therefore I am not satisfied on the basis of the evidence before me that the proposal would comply with paragraph Q.1 (h) of the GPDO.

Other Matters

17. I have been referred to another appeal decision² as part of the appellant's evidence. However, in that appeal the Inspector noted that the building was enclosed on all sides and was water tight and structurally sound and noted that

² APP/E2530/W19/3225819

it was those characteristics that made the building capable of conversion. Therefore, the appeal building is not directly comparable to the case before me.

18. There is a dispute between the parties as to the lawfulness of the concrete floor that has been installed within the barn, subject of this appeal. That is not the proposal before me and there are other mechanisms available to the appellant to establish the lawfulness of the concrete floor. However, my consideration does not turn on this matter.

European designated sites

19. The appeal site falls within a 'Zone of influence' identified by Natural England for likely significant effects to occur to a European designated site. Natural England has provided advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations.
20. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to establish whether the Regulation 77 process under the Conservation of Habitats and Species Regulations 2017 had been followed, and the pre-commencement condition imposed under Article 3(1) pursuant to Regulation 75 had been complied with. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

21. Given my conclusion that the proposal would not be permitted under Schedule 2, Part 3, Class Q.1 of the GPDO, there is no need for me to consider the proposal against the conditions set out in Class Q.2(1). For these reasons and having regard to all matters raised, the appeal is dismissed.

G. Pannell

INSPECTOR