The Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2020

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal Ref: APP/A2470/W/20/3256500
Romney Hut, Bidwell Lane, Clipsham LE15 7SH

- 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 & Mrs J Featherstone against the decision of Rutland Council.
- The application Ref 2020/0323/PAD, dated 5 March 2020, was refused by notice dated 30 April 2020.
- The development proposed is change of use of an agricultural building to 3 no. dwellinghouses.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal relates to a Romney hut, which the appellant wishes to convert to three dwellings (Use Class C3) under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter 'the GPDO')

3. Schedule 2, Part 3, Class Q.1(b) permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use as a dwellinghouse, along with the building operations reasonably necessary to convert the building. In considering proposals for development under Class Q.1(b), a determination must first take place as to whether the proposal constitutes permitted development. In the event that it does, Paragraph Q.2(1) requires the local planning authority to assess the impact of the proposed development on a limited number of 'prior approval' matters.

4. The application was refused on the basis that the proposal would not be permitted development, as the Council consider that it fails to satisfy the requirements of Paragraph Q.1(b) in that the physical works to carry out the proposed change would go beyond the building operations reasonably necessary to convert the building.

5. The appellant points out that a similar application for prior approval was considered at the appeal site by the Council[1]. Although this application was

[1] 2019/1217/PAD (the 2019 application)

recently refused, the reasons for refusal did not relate to the whether the building was capable of conversion. However, I must determine this appeal based on the evidence before me now, including the Council's reasons for refusal.

6. Were the proposal considered to be permitted development then the Council's second reason for refusal alleges that it would be undesirable for the building to change from agricultural use to residential with particular regard to whether the proposal would provide satisfactory living conditions for future occupiers. As such it would not comply with Condition Q.2(1)(e).

7. In that context, the main issues are:

- whether or not the proposal represents permitted development under Schedule 2, Part 3, Class Q of the GPDO
- whether or not it would be undesirable for the building to change from agricultural use to residential

Reasons

8. Planning Practice Guidance (PPG) advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. It also states 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[2]. 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. This is a matter of fact and degree and requires an element of judgement.

9. It is evident from my observations on site that the appeal building cannot currently be occupied as dwellings. The question is whether the extent of works required to enable it to be so, would be beyond what would be reasonably necessary for a conversion.

10. Part Q.1(i) states that development under Class Q(b) would not be permitted if it consists of building operations other than— (i) the installation or replacement of— (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.

11. None of the identified proposed works falls outside the operations listed in paragraph Q.1(i) of the GPDO or in the PPG. However, in the Hibbitt judgement[3] to which the Council refers, Green J held that: "…the concept of "conversion" is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a "conversion" then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1."

[2] Paragraph: 105 Reference ID: 13-105-20180615 Revision date: 15 06 2018
[3] *Hibbitt v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (the Hibbitt judgement)

12. The fact then that the proposal does not include operations falling outside those listed in Q.1(i) of the GPDO or those referred to the PPG does not mean that it is automatically Permitted Development within Class Q.

13. The Council is of the opinion that the existing poor condition of the building, including the steel frame, corrugated sheeting and low concrete blockwork wall is such that new materials would be required and the extent of works would be a rebuild rather than a conversion.

14. The appellant has submitted evidence from a structural engineer that the existing steel structure is adequate to support the existing cladding and imposed loads. While some steel members have some surface corrosion, the structural engineer confirms that this could be easily removed by grit blasting.

15. I have seen no substantive evidence to dispute this. Indeed, a consultation response from the Council's Building Control Office on the 2019 application did not dispute the findings of the structural calculations.

16. However, the Hibbitt judgement established that structural integrity is not necessarily a decisive factor as to whether works related to a conversion or rebuild. In this case, although the structural engineer states that the existing corrugated sheeting would remain, the size of the building overall would be reduced by the removal of a section of the building at each end of the structure. The plans show that new cedar featheredge boarding would be used on the end elevations of the building. I have seen nothing to suggest that the existing structure would be capable of accommodating the proposed different type of cladding in the new position at the end elevations.

17. Furthermore, I am not convinced, following my observations on site, that the remaining cladding is in a condition that means it could readily be retained, given the holes and breaks I saw in it. Moreover, I have seen no detailed assessment of the ability to retain significant areas of the cladding. The low supporting concrete block wall would require some repair, but it has not been satisfactorily demonstrated that the majority of the wall/roof structure would, given its condition, be capable of retention.

18. As a result, the works here would likely involve the provision of new walls/roof, as well as the installation of doors and windows. In addition, there would be a requirement for internal dividing walls and a new first floor. Substantial works can fall under the scope of building operations within Class Q. However, in the proposal before me, the structure would only be capable of functioning as dwellings following substantial replacement and construction of a significant number of new elements. All that would exist of the original structure is essentially part of the steel frame and concrete blockwork of a very limited height. In my view, when comparing what would remain of the original building with what would be constructed, the works carried out would, as a matter of fact and degree, be more than a conversion.

19. The appellant refers me to what he considers to be a similar case where the Inspector found that the proposal would be a conversion and not a rebuild. However, in that case the Inspector found the existing building to be in good order, watertight and structurally sound. While the steel frame may be structurally sound in the case before me, I have found the building not to be in good order. Furthermore, it has not been satisfactorily demonstrated that the existing structure could support the different type of cladding at either end of

the building. These matters require the exercise of judgement and in my view the nature and extent of the works are such that the proposal would amount to a 'fresh build' with only a modest amount of help from the original agricultural building as set out in Hibbitt.

20. As I have found that the works would not constitute permitted development in this respect then it is not necessary for me to go on and to consider the works under Q.2(1)(e).

Conclusion

21. For the reasons given above, I conclude that the appeal should be dismissed

Zoe Raygen

INSPECTOR