



Appeal Decision

Site visit made on 14 October 2020

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal Ref: APP/J0405/W/19/3243093

Abacus Acres, Rowden Farm Lane, Mentmore, Bucks, LU7 0QD

- 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, 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 Mrs J. Radford against the decision of Aylesbury Vale District Council (which subsequently merged with other local authorities on 1 April 2020 to become Buckinghamshire Council).
 - The application Ref 19/03226/COUAR dated 4 September 2019, was refused by notice dated 25 October 2019.
 - The development proposed is prior approval of proposed change of use of agricultural building to a dwellinghouse (Use Class C3).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In considering proposals for development under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'), a determination must first take place as to whether the proposal constitutes permitted development. In the event that it does, Paragraph Q.2(1) of the GPDO requires the local planning authority to assess the proposed development on the basis of; - (a) its impact on transport and highways; (b) its impact on noise; (c) contamination risks on the site; (d) flooding risks on the site; (e) whether the location or siting of the building makes it otherwise impractical or undesirable for it to change from an agricultural use to a Class C3 dwellinghouse; (f) the design or external appearance of the building; and (g) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Main issues

3. The main issues are whether the proposed development complies with the conditions, limitations or restrictions applicable to development permitted, with particular regard to:
 - whether the existing building and land within its curtilage constitutes an agricultural use; and
 - whether the works would constitute a conversion in accordance with Paragraph Q(b) of the GPDO, or go beyond this and constitute a rebuild.

Reasons

Appeal site context

4. The appeal site is set within attractive countryside and contains a modern building comprised of a modest timber frame enclosed by walls formed of a single skin of timber cladding, with an open northern façade that fronts out onto an area of concrete hardstanding and fields/paddocks.

Whether the existing building and the land within its curtilage constitutes an agricultural use

5. There is no dispute between the parties that the building and land within the appeal site has been used for keeping sheep. However, the Council and Parish Council state that the lawful use of the appeal site does not constitute a sole agricultural use as it has also been used for equine related uses, namely the keeping of Shetland ponies.
6. On the balance of probability, I am satisfied that a not-insignificant part of the 6.5 hectares of pasture land associated with the building ('the wider site') was used for equine related purposes for a substantial period of time, and that this was taking place on 20 March 2013. Furthermore, I am also content that this was sufficiently intensive in nature to qualify as a primary use in its own right. This is based on the substantive information supplied by the Parish Council which shows website information for a pony stud from 2003 through to 2018, together with an informal witness statement, and the fact that the design and access statement that accompanied the application for the building in 2007¹ stated that it was to be used as stables and a hay barn to provide care for equines. The appellant does not dispute that horses were kept on the wider site and they recognise in their final comments that there could be 'more of a mixed-use' on the area of land beyond the appeal site in recognition of the fact that horses had been kept on that part of the site.
7. Paragraph Q.1. of the GPDO states that development is not permitted by Class Q if the site was not used solely for an agricultural use and Paragraph X defines 'site' as meaning the building and any land within its curtilage. To be able to assess what the lawful use is of any building and land, it is necessary to have regard to the planning unit that it forms a part thereof. According to case law², the planning unit should be determined by identifying the unit of occupation and whether there is any physical and/or functional separation of primary uses as a matter of fact and degree. In this case, Justice Bridge suggested three broad categories of distinction: 1) a single planning unit where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.
8. In light of the above, it follows that a planning unit may not be the same area or shape as the 'site' referred to in Paragraph X, which in any event, merely

¹ Planning Permission 07/01034/APP.

² *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207.

defines the extent of buildings or land the permitted development right applies to. As a consequence, it is not correct to say, as asserted by the appellant, that the land outside of the appeal site is irrelevant; - on the contrary, it is of fundamental importance if; (1) the relevant planning unit is larger than the site proposed for a change of use under Class Q; and (2) there is uncertainty over whether the lawful use is a sole agricultural use.

9. Based on the evidence before me and my observations on-site, I do not consider the appeal site to constitute a single planning unit in its own right as it cannot be distinguished, both visually and functionally, from the adjacent pasture land which forms part of the wider site. Neither is there sufficient evidence before me to conclude that the relevant planning unit in question was used for one main agricultural purpose of keeping sheep and that the equine activities were incidental or ancillary to this. There is also insufficient evidence that the sheep and equine activities were located in two physically distinct areas and that each had a different unrelated purpose. As a consequence, given my conclusion above that a primary equine use existed on part of the planning unit that the appeal site forms a part thereof and from which it acquires its lawful use, I conclude that the appeal site was not used solely for agricultural purposes.
10. As a consequence, the development would not satisfy the requirements of Paragraph Q(a) of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated guidance within the Planning Practice Guidance, and is not therefore permitted by it.
11. The appellant asserts that determining the lawful use of a site based on a larger planning unit would be 'nonsensical' and could result in the 'ill-conceived logic' of precluding a building benefiting from Class Q permitted development rights by reason of there being a multitude of different uses taking place. However, I must base my decision on the legislation before me, which clearly sets out where permitted development rights apply, and not on whether legislators were right to preclude uses that were not previously solely agricultural. As a consequence, I do not consider this line of argument justifies a departure from the well-established route of determining the lawful use of a building and/or land.

Whether the works would constitute a conversion in accordance with Paragraph Q(b) of the GPDO, or go beyond this and constitute a rebuild

12. On the basis of the evidence before me, I am satisfied that it would be technically possible to carry out additional works to the existing building to enable it to become a single residential dwelling. However, this alone does not demonstrate that such works constitute a 'conversion'.
13. For compliance with the limitations of the GPDO to be achieved, the decision-maker must be satisfied that the amount of works required for their new intended purpose are not so substantial as to be tantamount to the construction of a new building. This is reinforced by the Planning Practice Guidance³ which 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. Therefore it is only where the existing building is already suitable for

³ Paragraph: 105 Reference ID: 13-105-20180615, Revision date: 15 06 2018

conversion to residential use that the building would be considered to have the permitted development right.

14. Although detailed calculations were not part of the brief for the structural survey, I am satisfied that the existing building is capable of taking a new roof material that is no heavier than the existing concrete sheets. However, an alternative roof material has not been specified and the appellant's structural survey states that this limits the options to the finish. I also recognise that the installation or replacement of windows, doors, roofs external walls, water, drainage, electricity, gas or other services are allowed under Paragraph Q.1(i) of the GPDO, to the extent that they are reasonably necessary for the building to function as a dwellinghouse. However, this is nonetheless subject to the restriction at Paragraph Q(b) that the only building operations this permitted development right allows are those that are reasonably necessary to convert an agricultural building to a use falling within Class C3.
15. The evidence before me outlines a number of building operations and works that are needed to enable the agricultural building to function as a dwellinghouse, namely; (a) the construction of exterior cladding to the open end of the building; (b) the installation of windows and doors throughout the building; (c) the construction of an inner wall leaf to the entire building for thermal insulation and protection against moisture; and (d) the installation of insulation to the ground floor slab. There is no evidence before me that the roof would also need to be insulated, but I consider it likely that this would also be necessary.
16. However, despite the appellant stating that the walls and roof cladding would be retained where possible (and replaced if it is not), the submitted structural survey did not set out whether it is of a sufficient standard and quality that this is even feasible. Furthermore, even if it was capable of meeting the necessary standard, there is no information before me outlining the extent of existing material, if any, that would need to be replaced. On this point, I do not consider it sufficient for the appellant to specify that the walls and roof cladding will be retained where possible, as this could in theory give rise to the situation where none of it can be, which would then just leave a skeletal timber frame. Put simply, there is no evidence before me stating which parts, if any, of the external wall and roof cladding will be replaced and which will not. When considered collectively with all the other works proposed, I consider this to be fundamental importance when assessing whether there is a building capable of being converted. I recognise that the appellant asserts in their final comments that nowhere does it state that the walls and roof will need to be replaced, but in my view this contradicts their previous statements referred to above, particularly as I consider the existing cladding effectively constitutes the walls of the building.
17. On the basis of this and my observations of the building on-site, I consider there to be insufficient evidence for me to conclude that the resultant building would retain a significant amount of the existing exterior wall and roof cladding, and that its frame would be structurally strong enough to accommodate a different material if this was needed to replace that currently existing.

18. According to recent case law⁴, 'it is a matter of legitimate planning judgment as to where the line is drawn' between a conversion and rebuild, with the test focusing on one of substance, and not form. Having had regard to the planning practice guidance (which specifically refers to the *Hibbitt* case⁵), my on-the-ground assessment, the extent of works proposed, and the submitted evidence not conclusively demonstrating that a substantial amount of the external wall and roof cladding would remain, it is my view that the existing building would potentially be so skeletal and minimalist that the cumulative level of works necessary to facilitate a residential use would be of such a magnitude as to constitute a rebuild, with only limited assistance from the existing structure, and go well beyond what may reasonably be considered a conversion.
19. As a consequence, the development would not satisfy the requirements of Paragraph Q(b) of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated guidance within the Planning Practice Guidance, and is not therefore permitted by it.

Prior approval

20. Given my conclusion that the development would not be permitted under Class Q of the GPDO, there is no need for me to consider any of the prior approval matters as it would not alter the outcome of the appeal.

Other matters

21. My attention has been drawn by the appellant to other appeal decisions, but I see no conflict between these and my assessment of the scheme before me, whether that be in relation to the lawful use of the site or whether the building is capable of being converted. I recognise that there may be some general parallels in terms of the main issues considered and the fact that one Inspector found the replacement of existing lightweight sheet cladding to be capable of falling within the remit of a conversion, but any consideration of these matters is ultimately a matter of fine judgement based on a fact and degree assessment of the particular circumstances and evidence of the case, which are not entirely the same in respect of these other appeals and the scheme before me.
22. Although not referred to in the Council's reasons for refusal, the case officer report correctly indicates that Class Q permitted development is subject to the pre-requisite requirement that the change of use can only relate to the land within the curtilage of the said building. Paragraph X states that for the purposes of Class Q, 'curtilage' means: - "(a) 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 (b) 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" [my emphasis]. In the case before me, the Council and appellant both agree that the floor area of the building is 82 square metres, but it is unclear from the submitted information if the overall size of the piece of land shown by the appellant as being associated with the building is larger than the area of land occupied by the building. The case officer report states that the appeal site

⁴ *Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin).

⁵ Paragraph: 105 Reference ID: 13-105-20180615, Revision date: 15 06 2018

is 212.5 square metres, and the planning appeal form completed by the appellant reveals it to be 0.1 hectares (1,000 square metres), which would mean that the area of land within the curtilage is larger than the area of land occupied by the building. If this were correct, the amount of land would exceed the area of curtilage permitted by the GPDO, which clearly states 'whichever is the lesser' in reference to the two options given. It is unclear from the evidence that this is conclusively the case, but if it were, it would constitute a further reason why the scheme does not qualify as permitted development under Class Q.

23. The Council and interested parties also state that a planning condition on the original planning permission for the building restricted any business or commercial use and it has been implied that the use of the site has been in breach of this. However, given that I am dismissing the appeal for other reasons, it has not been necessary for me to assess whether the current use of the site is lawful. However, it is open for the appellant to apply to have such matters determined under sections 191 or 192 of the Act or for the Council to take enforcement action if it considers previous operations to be unlawful. Any such application or enforcement action would be unaffected by my determination of this appeal.

Conclusion

24. For the reasons given above, I have concluded that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
25. The appeal is therefore dismissed.

Robert Fallon

INSPECTOR