



Appeal Decision

Site Visit made on 8 February 2021

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Appeal A Ref: APP/W3330/W/20/3262500

Barn A, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0002/CQ, dated 17 March 2020, was refused by notice dated 7 May 2020.
- The development proposed is conversion of barn to dwelling.

Appeal B Ref: APP/W3330/W/20/3262537

Barn B, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0003/CQ, dated 17 March 2020, was refused by notice dated 6 May 2020.
- The development proposed is conversion of barn to dwelling.

Appeal C Ref: APP/W3330/W/20/3262547

Barn C, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0004/CQ, dated 17 March 2020, was refused by notice dated 6 May 2020.
- The development proposed is conversion of barn to dwelling.

Appeal D Ref: APP/W3330/W/20/3262552

Barn D, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
 - The application Ref 22/20/0005/CQ, dated 17 March 2020, was refused by notice dated 6 May 2020.
 - The development proposed is conversion of barn to dwelling.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is dismissed.
4. Appeal D is dismissed.

Procedural Matters

5. Separate applications have been submitted concerning four different buildings under Class Q of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) seeking approval for the change of use under Q(a) and the building operations reasonably necessary to convert the building under Q(b). Each proposal concerns a separate barn with its individual considerations, although some of the relevant issues are similar.
6. A Structural Appraisal Report has now been submitted to seek to address the reasons for refusal in each case. I have had regard to the Report in my considerations.
7. I noted that at the application stage, the County Council Ecologist had raised a holding objection to the works to Barns A, B and C because of the potential for roosting bats in the structures. As I considered that the presence of bats could be a material issue that may affect the outcome of three of the appeals I sought the views of the appellant on the advice of the Ecologist. The appellant has responded with detailed comments and I have taken them into account as part of my considerations. I am satisfied, therefore, that no party would be prejudiced by my consideration of this issue.
8. At the appeal stage, information from the County Council Ecologist has raised the issue of recent advice from Natural England regarding nutrient flows from new development within the catchment of the Somerset Levels and Moors Ramsar site. It is explained that because of the impacts there is a need for an appropriate assessment, and depending on the outcome, this could disapply the ability for the proposals, in each case, to be considered under Class Q. The appellant has had the opportunity to comment on this matter at the final comments stage and I will examine the implications of this advice later.

Main Issues

9. The main issues are, in the case of each building, whether or not the proposal is applicable to be considered under Class Q, and if so, secondly, whether it would meet with the conditions and limitations of Class Q.1, and finally, if these circumstances are met, whether prior approval should be granted.

Reasons

Barn A

10. Barn A is a substantially built and traditional building with a tiled roof. It appears to be in reasonable condition and structurally sound. The Structural Appraisal Report, although brief, provides sufficient evidence to affirm this view. I consider that the works proposed to the structure would retain the vast

majority of the building and can be considered as a conversion. Therefore, the proposal would be applicable for consideration in terms of Class Q.

11. Paragraph Q.1.(h) sets out one of the limitations for a scheme to be considered as permitted development. This specifies that a proposal would not be permitted development if the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.
12. The plans show that two external staircases would be constructed to facilitate access to the external doors. The staircases incorporate a number of steps and would be of solid construction such that they would not be considered to be *de minimis* additions. Their construction would involve development. The limitation under paragraph Q.1.(h) does not reference floorspace but it is the external dimensions of the building that should not be extended. The definition of a building in the GPDO includes part of a building. The staircases would be attached to and form part of the finished building. The staircases would, therefore, extend the external dimensions of the building at those given points and the limitation under paragraph Q.1.(h) would not be met.
13. As a consequence, I conclude that the scheme would not comply with all the conditions and limitations set out in Class Q.1 and therefore the proposal would not be permitted development. As a result, I do not need to consider the prior approval matters in this case, including any issue in relation to bats that may be present.

Barn B

14. Barn B is another substantially built and traditional building. It has some cracks to the elevations but it still appears to be in reasonable condition and of generally sound construction. The Structural Appraisal Report affirms this analysis. The works proposed to the existing structure would fall within the bounds of a conversion and therefore the scheme would be applicable for consideration in terms of Class Q.
15. The proposal for this barn includes the erection of a fairly sizeable external ramp and steps to provide access to the external door. This addition would be attached to the external form of the present building and form part of the building. This addition would extend the external dimensions of the building at this given point. This would be contrary to the requirements of paragraph Q.1(h).
16. Accordingly, I conclude that the scheme would not comply with all the conditions and limitations set out in Class Q.1 and therefore the proposal would not be permitted development. As a result, I do not need to consider the prior approval matters in this case, including any issue in relation to bats that may be present.

Barn C

17. Barn C is a reasonably modest sized stone barn at one end of the yard area. It is a substantially built and traditional building with a number of existing openings. While there are some cracks to the elevations it appears to be a solidly constructed building. The Structural Appraisal Report is sufficient to support this analysis. The works would retain the vast majority of the structure and are considered to be a conversion of the building. In this respect the

proposal can be considered under Class Q. The Council has not raised any issue with the conditions and limitations listed under paragraph Q.1 and I have found no reason to disagree. Accordingly, it is necessary to consider the prior approval matters in relation to the scheme.

18. I have noted from the advice from the County Council Ecologist, at the application stage, that there are some opportunities for crevice roosting bats in the structure of Barn C. As the Council did not consider the proposal met with the requirements of Class Q it did not consider this matter further and it did not form a reason for refusal. Given my findings on the preceding matters, this is now a issue which I need to address.
19. I note that no Preliminary Bat Roosting Survey has been submitted as recommended by the County Ecologist in his original advice. Bats are a protected species. The advice in Circular 06/2005 is that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. I consider that this advice is also relevant to the present proposal and the necessary considerations.
20. I note that the submissions indicate that the appellant's own observations have not witnessed bats leaving, entering or inside the buildings, or seen physical evidence of any bats being there. However, in the absence of professional survey information undertaken in accordance with best practice, I attribute these observations limited weight. It seems to me from my site visit that the location of the barn and its features could provide suitable roosts for bats and this is also the view of the County Ecologist whose professional opinion I attribute substantial weight. It would not be appropriate to seek resolution of this issue the subject of a condition in any approval. This is because the nature and extent of any bats are not known and, consequently, there is uncertainty as to what mitigation may be required and whether the design may need to be altered to address this issue.
21. Relying on the fact that causing harm to a bat habitat could be a criminal offence to ensure the protection of any bats that may be present would not be appropriate as it is necessary to take all relevant considerations into account at this stage.
22. As the location of the barn, together with its features, make it potentially suitable for bats to be present I conclude that it would be undesirable for the building in this location to change to a dwellinghouse because of the potential presence of a protected species. The proposal would therefore fail to satisfy the requirements of paragraph Q.2.(1)(e), the wording of which I consider is sufficiently broad to cover this issue. Consequently, I conclude that prior approval should not be granted and the proposal would not be permitted development under Class Q.

Barn D

23. Barn D is an opened fronted portal framed barn. It has an internal metal frame with timber purlins. The enclosed sides have a mix of block work, horizontal timbers, fibre cement sheeting and vertical slatted timber elements. I have carefully considered the Structural Appraisal Report and all the accompanying details. The Report says the roof should be replaced, and is not definitive, in

my judgement, as to precisely what other parts of the structure would or would not be retained as part of the proposal under consideration.

24. In particular, I note that the Report explains that new perimeter walls are to be constructed with the existing 140mm blocks left in place. However, it is also suggested that new lightweight perimeter walls are supported off the new slab with an edge thickening. There is limited detail to the specifications or large scale drawings, for instance, to help me understand whether this approach is consistent and could be undertaken given the condition and mix of external walling that I observed at my site visit. Furthermore, the provision of an edge thickening may be akin to a foundation which is an addition not permitted under paragraph Q.1.(i). I do not have the level of detail to assist me to determine whether this would be the case.
25. Again there is some doubt, in my mind, based on my observations at the site visit, as to whether the timber purlins would be sufficient and while they could be strengthened the details are not available to understand how much of this part of the structure, if any, may need to be removed and what could be retained and strengthened. I have had regard to the final comments of the appellant on this matter and appreciate that the Structural Appraisal Report comes from a qualified professional. However, the detail is brief and not entirely definitive such that I am not able to ascribe any more than limited weight to the Report submissions in respect of Barn D. Because of the form of the structure and its present condition, more detail is necessary to accurately assess the likely extent of works to be undertaken.
26. The ability to undertake works to facilitate a conversion can be quite broad under Class Q, including a replacement roof. However, from my assessment on site and the details submitted with the application, I am concerned that much of the fabric could need to be removed to facilitate the provision of the dwelling. It may be the case that so much of the existing fabric would be lost that effectively only a skeletal frame of the original building would remain. If this was the case, then having regard to the approach set out in *Hibbitt and another v Secretary of State for Communities and Local Government (1)* and *Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin) the works would not fall within Class Q as they would constitute a rebuild and not a conversion.
27. The advice in the Planning Practice Guidance¹ explains that it is not the intention of the permitted development right under Class Q to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. It is explained, 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.
28. In my judgement, I do not have the necessary and detailed information to accurately assess whether the works would constitute a conversion or a rebuild. Paragraph W.(3)(b) explains that the Local Planning Authority may refuse an application (for prior notification under Part 3) where in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

¹ Paragraph: 105 Reference ID: 13-105-20180615

29. As a consequence, I conclude that insufficient information has been provided to establish whether the proposed development would comply with the requirement that the works would constitute a conversion and therefore would comply with the requirements of Class Q. Consequently, in accordance with paragraph W.(3)(b) the scheme cannot proceed as permitted development and as a result, I do not need to consider the proposal further.

Other Matters

30. In respect of the potential effect on the Somerset Levels and Moors Ramsar site it appears from the evidence that nutrient flows from new housing and other developments from within the catchment of this habitat site are entering the watercourses and adversely changing the environmental conditions for rare aquatic invertebrates. Based on the information it seems probable that there would be a pathway from the additional dwellings to the habitat site and, therefore, there would be a likely significant effect from each appeal proposal, either alone or in combination with other projects, to the designated site.
31. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, before the works can be undertaken as permitted development. This includes a separate application to the Local Planning Authority under regulation 77 of the Habitats Regulations to allow the Local Planning Authority to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.
32. I am not aware that an application to the Local Planning Authority under regulation 77 has been made in respect of any of the proposals and therefore whether this pre-commencement requirement of Article 3(1) could be met. Nevertheless, as the regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined and, therefore, I do not need to consider this matter further as part of these appeals.
33. Two letters of objection from local residents have been submitted and I note that Lydeard St Lawrence and Tolland Parish Council raise no objections to the four proposals. I have taken these views into account, however, they do not materially influence my considerations on the main issues examined above.

Conclusion

34. For the reasons set out above, and having regard to all other matters raised, I conclude that for the specified reasons in each case, all four appeals should be dismissed.

David Wyborn

INSPECTOR