



Appeal Decision

Site visit made on 19 February 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2021

Appeal Ref: APP/Z3825/W/20/3257021

Little Lockets, Bashurst Hill, Itchingfield RH13 0PD

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr R Spofforth against the decision of Horsham District Council.
 - The application Ref DC/20/0376, dated 24 February 2020, was refused by notice dated 20 April 2020.
 - The development proposed is conversion of agricultural buildings to residential use as a dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application for prior approval was made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO').
3. Class Q permits the change of use of agricultural buildings to dwellings, with associated operational development, subject to the criteria set out within the GPDO. In this instance, it is proposed to convert two former agricultural buildings into one dwellinghouse.
4. In determining the application, the Council concluded that the proposal did not comply with Criterion Q.1(a) and Q.1(i) of Paragraph Q.1 of the GPDO.

Main Issues

5. The main issues are:
 - whether the change of use would be permitted development having regard to Class Q, Paragraph Q.1, Criterion Q.1(a) of the GPDO; and
 - if so, whether the scope of the proposed building operations are reasonably necessary for the conversion of the building to residential use having regard to Paragraph Q.1, Criterion Q.1(i) of the GPDO.

Reasons

Permitted development

6. The appeal site comprises of two single storey buildings, which are located to the rear/side of an existing dwellinghouse, known as 'Little Lockets'. The two buildings form part of a wider group of four buildings which were originally used to keep chickens and associated agricultural equipment in relation to a poultry/egg production enterprise which has now ceased.
7. The precise date at which the former poultry/egg production enterprise ceased is unclear, but representations submitted by local residents suggest that it was at some point during the mid-late 1970's.
8. Criterion Q.1(a) of Paragraph Q.1 of the GPDO states, *inter alia*, that development is not permitted by Class Q if – (a) the site was not used solely for an agricultural use as part of an established agricultural unit – (i) on 20 March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
9. Therefore, the key consideration in respect of this main issue relates to whether the buildings were used solely for an agricultural use as part of an established agricultural unit on 20 March 2013.
10. The appellant explains that Little Lockets with its surrounding agricultural land and the group of poultry buildings that were formerly used as part of the poultry/egg production enterprise was purchased by the current owners in 1983. Since that date, the appellant explains that the two buildings have not been used as poultry sheds.
11. It is common ground between the main parties that an agricultural occupancy planning condition restricting the use of Little Lockets was removed by the Council in 1985¹. The appellant explains that the agricultural occupancy condition was removed on the basis that the acreage would not be sufficient to provide an agricultural worker's sole income. This has not been disputed by the Council.
12. The removal of such an occupancy condition does not in and of itself mean that the agricultural use of the associated land and buildings had to cease thereafter.
13. Indeed, the appellant states that the land associated with Little Lockets has been grazed by sheep over the past ten years (i.e. since at least 2011) with hay and silage being taken off the land.
14. This is corroborated in written correspondence² from the landowners who also explain that the appeal buildings have been used for the storage of animal feed and to shelter the animals. As part of their letter the landowners state that they claimed an agricultural Single Farm Payment subsidy from DEFRA³ from 2005 - 2014. They explain that they qualified for the subsidy because at least 0.1 hectares of their land was used for agricultural activity. This has not been disputed by the Council.

¹ Council Ref: I/24/84

² Letter from Sarah and Barry Peay

³ The Department for Environment, Food and Rural Affairs

15. The landowners go on to state that the Single Farm Payment subsidy scheme changed in 2015, but that the agricultural use of the wider holding has continued. To this regard, the correspondence from the landowners states "as a farmer's daughter, I have over the 38 years that we have lived here kept sheep and poultry as well as taking hay and/or silage off of the fields".
16. The agricultural use of the wider holding has been evidenced by site photos submitted by the appellant, which show sheep grazing the land around the former poultry sheds. However, it is unclear whether these photographs were taken before or after 20 March 2013.
17. The agricultural use of the appeal buildings is detailed in correspondence from an interested third party⁴ who states that she has visited the occupiers of Little Locketts on countless occasions since 1990 and during such visits "the two sheds concerned have only been used to support the agricultural activities around the sheep, their feed shelter and to store the hay from the fields".
18. In addition, correspondence from another third-party⁵ states that the buildings have been used for "sheltering the animals particularly after the sheep have been sheared and for keeping feed and hay. The hay having been taken from their fields".
19. I am cognisant that neither of the submitted third party letters are sworn affidavits. Nevertheless, they support the appellant's position and provide a contextual overview of the activities that have been undertaken at the appeal site in recent years, which is a material consideration in this case.
20. Moreover, on my site visit I observed a group of sheep grazing on the field immediately in front of Little Locketts and noted evidence of recent sheep shearing within one of the appeal buildings. This suggests that the agricultural use of the buildings remains on-going.
21. Whilst the key consideration in respect of this main issue relates to whether the buildings were in agricultural use on 20 March 2013, my site observations nevertheless support the appellant's position that the buildings were in agricultural use at that time and have remained in such use thereafter.
22. Several local residents assert that one of the buildings was rebuilt in 2019, and, thus, it would not benefit from permitted development rights set out under Class Q. This has been disputed by the appellant who explains the building repairs were undertaken following weather damage.
23. In support of their position, the occupier of Locketts Farm has drawn my attention to a Google satellite image dated 26 September 2018, which he argues demonstrates that the building had collapsed. The satellite image is of a low resolution, and, thus I cannot assess with any meaningful degree of certainty whether or not it shows that the building in question had collapsed. Moreover, on my site visit I observed that the building was weathered throughout, which indicates that it was not reconstructed in 2019.
24. Local residents also argue that the buildings have been abandoned for a significant period of time, and, thus permitted development rights set out under Class Q do not apply. Given the compelling evidence submitted by the

⁴ Letter from Mrs Kimberley Williams

⁵ Letter from Sharon and Marc Stalhberger

appellant and the landowners to demonstrate that the buildings have been used for agricultural use as part of an established agricultural unit, which has been corroborated by several interested third parties, and, my aforementioned site observations, I cannot agree that the agricultural use of the buildings has been abandoned.

25. Based on the evidence before me, as a matter of fact and degree, on the balance of probabilities, I am satisfied that the buildings were used solely for an agricultural use as part of an established agricultural unit on 20th March 2013. Consequently, I conclude that the change of use would be permitted development having regard to Class Q, Paragraph Q.1, Criterion Q.1(a) of the GPDO.

Building operations

26. Development consisting of building operations reasonably necessary to convert the buildings into residential use is permitted development under Class Q.(b) of Part 3 of Schedule 2 of the GPDO. The limitations to the 'operations reasonably necessary' are set out at Paragraphs Class Q.1(h) and (i) of Class Q.
27. The Planning Practice Guidance, which is a material consideration in this case, states that "the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits 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. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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 conversion to residential use that the building would be considered to have the permitted development right".
28. In this instance, the appeal is supported by a structural condition report⁶ which concludes "in theory, the buildings could be converted but further consider that additional work will, of course, be required to achieve this goal".
29. Whilst this may be the case, the scope of the report is limited, and no assessment of the suitability of the existing foundations appears to have been undertaken. To this regard, the report states "we have not checked the depth of any foundations provided and it is quite possible that Building Regulations may require an improved foundation to be constructed in order to support any future structure, or current structure, for the purposes of providing residential accommodation/conversion".
30. The Courts⁷ have found 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.

⁶ Structural condition report by ML Surveyors dated 16 September 2019

⁷ Hibbitt v SSCLG [2016] EWHC 2853

31. The excavation and installation of new foundations is not included on the list of permitted building operations that are reasonably necessary for the building to function as a dwellinghouse, as set out at Criterion Q.1(i) of Class Q. Moreover, the construction of new foundations is likely to go beyond 'maintenance, improvement or other alteration' which would be exempted from the meaning of 'development' under s55(2)(a) of the Act⁸ since they would lead to the construction of a new building.
32. In absence of any detailed structural assessment in relation to the suitability or otherwise of the existing foundations, I cannot be certain that new foundations would not be required. Therefore, I am unable to assess whether the agricultural buildings are capable of functioning as a dwelling without rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use.
33. Consequently, as a matter of fact and degree, I cannot be certain whether the totality of works would amount to complete or substantial re-building. For this reason, I cannot conclude that the scope of the proposed building operations are reasonably necessary for the conversion of the building to residential use having regard to Paragraph Q.1, Criterion Q.1(i) of the GPDO.
34. The appellant has drawn my attention to an appeal decision⁹ from June 2019 where an Inspector granted prior approval for a change of use of an agricultural building to a dwellinghouse under the provisions of Class Q. The appellant argues that the case demonstrates that replacing the roof covering, floor slab and providing new cladding with the insertion of windows and doors in exterior walls are building operations reasonably necessary under Class Q.
35. Whilst I am not aware of the full circumstances of that particular case, in reaching his decision the Inspector found that the foundations of the appeal building would not require any works. For the reasons set out above, I have not been able to reach this conclusion in respect of the current proposal. Consequently, the previous appeal decision is materially different to the current proposal. As such, I have afforded the previous decision limited weight.

Other Matters

36. The Council are opposed to the design and external appearance of the proposed dwelling, whilst a local resident has raised concerns about the impact of the development on the setting of a neighbouring listed building. As I have found that insufficient information has been provided to demonstrate that the proposed building operations are reasonably necessary for the conversion of the building to residential use, the detailed prior approval matters do not therefore fall to be considered as part of the determination of this appeal.
37. A neighbouring resident has drawn my attention to a restrictive covenant at the appeal site, which may prohibit the use of the existing access for an additional dwelling within the grounds of Little Lockets. Moreover, they dispute the extent of the appellant's land ownership, as denoted by the blue line on the submitted plans. However, these are separate legal matters which falls outside of the scope of this appeal.

⁸ The Town and Country Planning Act 1990

⁹ PINS Ref: APP/Z3825/W/18/3211612

Conclusion

38. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell

INSPECTOR