



Appeal Decision

Site visit made on 27 April 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2021

Appeal Ref: APP/J1860/W/20/3265391

Dutch Barn, Brook Barns, Eldersfield, Worcestershire GL19 4PR

- 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 S Chaplin against the decision of Malvern Hills District Council.
 - The application Ref 20/00910/GPDQ, dated 1 July 2020, was refused by notice dated 18 September 2020.
 - The development proposed is the change of use of an agricultural building to dwelling house (Class C3) and associated building works.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter referred to as the Order) for the change of use of an agricultural building to dwelling house (Class C3) and associated building works at Dutch Barn, Brook Barns, Eldersfield, Worcestershire GL19 4PR in accordance with the terms of the application Ref 20/00910/GPDQ, dated 1 July 2020. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with paragraph Q.2(3) of the Order and the following additional conditions.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 23-111 Rev A Existing Elevations – Barn B; 23-191 Rev E OS Map; 23-201 Rev B Proposed Floor Plan – Barn B; 23-211 Rev B Proposed Elevations – Barn B; 23-301 Rev C Existing and Proposed Floor Plans – Barn B; 23-601 Rev C Existing and Proposed External Views – Barn B and 23-901 Rev E Proposed Site Plan & Sections – Barn B.
 - 2) The development hereby permitted shall be carried out in accordance with the Flood Mitigation and Management Measures detailed in paragraphs 4.3.1 and 4.5.1 of the Flood Risk Assessment dated May 2018 prepared by Amber Planning.
 - 3) The development hereby permitted shall be carried out in accordance with the mitigation and enhancement recommendations relating to external lighting and provision of bat roost in paragraphs 6.2.1 and 6.3.1 of the Bat Roost Assessment dated February 2018 prepared by Pure Ecology.

Procedural Matters

2. The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 made amendments to Class Q of the Order. This introduced an additional matter for which prior approval would be required, namely the provision of adequate natural light in all habitable rooms of the dwellinghouse proposed. However, the transitional arrangements in Regulation 27 confirm that this is not applicable to the giving of prior approval in relation to matters in paragraph Q.2 of the Order in relation to an appeal which was lodged within 6 months of the date of notice of refusal of a prior approval application submitted before 1st August 2020. Accordingly, it would not apply in this case.
3. At my site visit I noted that the south elevation shown on the existing plans (drawing no. 23-111 Rev A) appears to show the existing window in the wrong place. Furthermore, annotations for the 'new' and 'existing' window shown on the proposed elevations (drawing no. 23-211 Rev B) should be the other way round. However, as this does not amount to a serious deficiency in the accuracy of the drawings, I am satisfied that no one will be prejudiced by my determining the appeal based on the plans before me as informed by my site visit.

Main Issue

4. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the Order having particular regard to whether the requirement of Class Q(b) of the Order that the building operations are reasonably necessary to convert the building would be met.

Reasons

Whether the proposal would be permitted development under Class Q(b)

5. Class Q(b) of the Order permits building operations reasonably necessary to convert the relevant building to a use falling within Class C3. It further 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 exterior walls, or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse.
6. The agricultural building in question is a steel framed Dutch Barn with a curved roof and adjoining mono pitch element. The roof is clad with corrugated metal sheeting. Aside from the north facing elevation, which is approximately two thirds open and one third brick external wall with doors and windows, the structure is enclosed with walls comprising mostly of corrugated metal sheeting above brick or concrete block work at low level.
7. The submitted structural report¹ states that the foundations to the steel frame columns consist of concrete pads and that where there is a concrete ground floor slab it is non-load bearing. It concludes that there is no indication of any foundation movement or settlement to the existing structure. It goes on to state that new external and internal walls would comprise lightweight non-load bearing construction and the non-structural concrete ground bearing floor slab

¹ Prepared by DAT Design Ltd, dated March 2020

would be tied to the existing steel columns. It concludes that the existing steel frame and foundations would be able to support the proposed additional loads and that the steel framed structure is suitable for conversion to a dwelling. I have not seen any substantive evidence to show otherwise. Therefore, the structural report prepared by a qualified engineer indicates that the building is suitable for conversion without structural interventions.

8. Further information is provided by the appellant as to the extent of the proposed building operations, which broadly describes how much of the existing building would be retained. He expressly confirms that all the barn's existing external cladding would be retained². Despite the Council's reservations, I have not seen substantive evidence to show that this would not be possible. A new section of external walling incorporating a bifold door and window would infill the open part of the northern elevation. Existing door and window openings would largely be retained but given my observations of the condition of existing fenestration, these seem likely to be replaced. In addition, there would be a new window on the south elevation. Internal works to line and insulate the roof and walls, provide a floor and internal room walls would also be required.
9. Planning Practice Guidance (PPG)³ advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling, clarifying that it is not the intention of the permitted development right in Class Q(b) to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. In this respect the PPG refers to relevant case law⁴ to which I have had regard.
10. The caselaw established that Class Q(b) only permits building operations necessary to convert the building, and therefore if a development does not amount to a conversion then it fails at the first hurdle, even though the building operations may fall within those listed in paragraph Q.1(i). Furthermore, whether a proposal constitutes a conversion or a rebuild is a matter of planning judgement and the nature and extent of the proposed building operations are a relevant consideration in making that assessment. Essentially, the parties disagree as to whether the extent of works involved in this case would exceed those permitted by Class Q(b).
11. From the information in the structural report, plans and appellant's statement of case, the cumulative extent of the works proposed to facilitate a residential use would be considerable. Nevertheless, the new external walling proposed represents approximately 20% of the total, with 80% of the proposed exterior walling material comprising retained existing walling⁵.
12. Although a new internal floor level would be introduced, the evidence provided indicates that it would not involve excavation or new foundations as it would be a non-structural concrete ground bearing floor slab and the Flood Risk Assessment provided specifies an internal floor level to reduce flood risk. PPG advises that internal works are not generally development. It states that for

² Paragraph 4.16, Appellant's Statement of Case

³ Paragraph 105 Reference ID: 13-105-20180615 revision date 15.06.2018

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

⁵ Paragraph 4.14 Appellant's Statement of Case

the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor.

13. In addition, the provision of internal walls and insulation would be generally required to meet regulatory standards necessary to make the building warm, dry and suitable for human habitation. Furthermore, I am satisfied that the additional internal dividing walls shown on the proposed floor plan would not be excessive and would provide an appropriate degree of privacy for the space to operate as a dwelling.
14. Taking these factors together, given the extent of original fabric retained in this case, the works proposed would not amount to a fresh build of the structure. Accordingly, the proposal would cover works reasonably necessary for the building to function as a dwellinghouse.
15. Given that the central issue requires the exercise of planning judgment, it is perhaps not that surprising that appeal decisions involving other agricultural buildings illustrate judgements both for and against specific proposals. Both parties have highlighted⁶ various appeal decisions involving some consideration of the extent of works proposed under Class Q of the Order. These examples all related to different buildings and therefore, necessitated a different individual judgement to be made in each case. In broad terms, my general approach accords with the relevant factors identified by those Inspectors. However, given the differences in building type, construction and available structural information they are individually of limited weight when exercising the judgement in this case, and I have considered the proposal on its own merits.
16. Furthermore, the detailed circumstances in relation to the proposal before me differ from those of the building considered in the Hibbitt case, in that the building in that case was largely open sided and involved the construction of four exterior walls. In contrast the proposal before me would retain a significantly greater degree of original building fabric.
17. Based on the evidence provided, the proposal would involve building operations reasonably necessary to convert the building to a dwelling. Therefore, the building would benefit from the permitted development rights under Schedule 2, Part 3, Class Q(b) of the Order subject to the conditions set out in paragraph Q2 of the Order.

Other Matters

18. Paragraph Q.1(a) of the Order, does not permit development where the site was not used solely for an agricultural use as part of an established agricultural unit within a requisite period. Representations received raise concerns that the appellant is not a farmer or small holder and that the appeal building is not part of a farming unit. On that basis it is asserted that the permitted development in Class Q ought not to apply to either building at Brook Barns. However, the scope of my determination only extends to the eastern building which is the subject of this appeal. Furthermore, taking account of the analysis of the relevant planning history and aerial photography in the Council's

⁶ From the Appellant - Appeal references APP/L3245/W/18/3216271; APP/N4720/W/19/3219850 and APP/B3030/W/19/3223635. From the Council - Appeal references APP/C1435/W/17/3191024; APP/Z2315/W/19/3223915; APP/J1860/W/20/3256392 (copy of decision not provided) & APP/J1860/W/20/3249818 (duplicated at appendices 8 and 10, Council Statement of Case).

delegated decision report, as well as the statutory declaration⁷ provided regarding the use of the building, the balance of evidence before me indicates that the requirement of paragraph Q.1(a) is met.

19. I have also considered the evidence provided by the Council and the appellant with regards to the remaining requirements of paragraph Q.1 (b)-(m) of the Order and the impact of the proposal on transport and highways, noise impacts, contamination risks, flood risk, location and the design and appearance. A number of comments were made by third parties in relation to the application raising concerns regarding landscape setting, highway and parking matters, potential use as a house in multiple occupation and the cumulative impact arising from the prior approval given for a dwelling at the adjacent building. However, the principle of the dwelling house is permitted by the Order and as such, only the matters reserved for prior approval set out in Paragraph Q.2, Class Q of the Order are relevant to my determination. Hence, potential future changes to other uses fall outside the scope of the determination.
20. The modest changes to the external appearance of the building would be unlikely to impact on the wider landscape. In terms of impact on highway safety, the proposal would use the existing access serving the agricultural building. In comparison to movements likely to be generated by an agricultural use of the building, the change to a single dwelling would be unlikely to adversely affect highway safety. My observations were that reasonable space exists for parking to the front of the building. Moreover, given the relatively modest scale of the development, associated construction traffic would be limited and temporary. Therefore, there is little substantive evidence that would undermine the finding of the Council that the transport and highway impacts of the development would be acceptable.
21. As mentioned above, recent amendments to Class Q of the Order have introduced a further matter, namely consideration of the provision of adequate natural light in all habitable rooms of the dwellinghouse. Whilst the transitional arrangements mean that this would not apply in this case, the proposed floor plan shows that all habitable rooms would benefit from natural light.

Conditions

22. Paragraph Q.2(3) of the Order requires the development to be completed within a period of 3 years from the date that prior approval is given and in order to highlight this, I have referred to it in my decision. In addition, to ensure certainty, I have imposed a condition setting out the approved plans.
23. Furthermore, given that the site lies within an area at higher risk of flooding I have imposed a condition to secure the flood mitigation and management measures identified in the submitted Flood Risk Assessment in order to reduce the risk of harm.
24. Finally, although the evidence indicates that the appeal building did not house roosting bats, given the nature of the surrounding countryside, they may generally be present. It is necessary to protect, and where possible enhance habitats used by protected species. As such, a condition to require lighting

⁷ Dated 24.10.18

mitigation and the provision of an artificial bat roost in line with the recommendations of the submitted ecology report is imposed.

Conclusion

25. For the reasons given above, I find that the proposed change of use is permitted development under Schedule 2, Part 3, Class Q(a) and Class Q(b) of the Order and as such, having considered all matters raised, the appeal is allowed and approval granted.

Helen O'Connor

Inspector