



Appeal Decision

Site visit made on 22 June 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/L3815/W/21/3270874

112 Second Avenue, Batchmere, Chichester PO20 7LF

- 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(1) and 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 Maureen Doyle against the decision of Chichester District Council.
 - The application E/20/02386/PA3Q, dated 30 September 2020, was refused by notice dated 25 November 2020.
 - The development proposed is notification for prior approval for a proposed change of use of agricultural building to a dwellinghouse (Class C3), and for associated operational development.
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Decision

1. The appeal is allowed and 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) (the 'Order') for a proposed change of use of agricultural building to a dwellinghouse (Class C3) and for associated operational development at 112 Second Avenue, Batchmere, Chichester PO20 7LF in accordance with the application E/20/02386/PA3Q, dated 30 September 2020, and the details submitted with it.
2. This 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 condition:
 - (1) The dwelling hereby approved shall not be occupied until details of the proposed boundary treatments has been submitted to and approved in writing by the Local Planning Authority. Once approved, the boundary treatments shall be installed prior to occupation of the dwelling and thereafter maintained.

Application for Costs

3. An application for costs was made by Mrs Maureen Doyle against Chichester District Council. This application is the subject of a separate decision.

Preliminary Matters

4. The application was submitted without using an application form. I have taken the date of submission as being that stated on the appeal form.

5. The appeal is accompanied by a copy of a unilateral undertaking which secures a financial contribution towards measures to mitigate harm to the Chichester and Langstone Harbours and Pagham Harbour Special Protection Areas in the event that the appeal is allowed. I comment further on the undertaking in my reasoning below.

Main Issues

6. The main issues are:

- whether the proposed development falls within the terms of the permitted development right under Schedule 2, Part 3, Class Q; and
- the effect of the development on ecologically sensitive areas.

Reasons

Permitted development

7. The permitted development right under Schedule 2, Part 3, Class Q(b) of the Order allows the change of use of an agricultural building and any land within its curtilage to a dwellinghouse together with building operations reasonably necessary to enable the conversion, subject to various limitations and conditions as set out in paragraphs Q.1 and Q.2 of that Class.
8. The agricultural building is clad in cement corrugated sheeting on the roof and upper walls, above a concrete block wall, rendered on the outside. The external cladding is mounted on a steel frame. Access is gained through two large door openings. The building is enclosed on all four sides. For the conversion to a dwellinghouse, the existing steel frame, external walls and roof covering would be retained, with doors and windows inserted in the external elevations, some within existing openings and some within new openings. Internally, floor, wall and roof insulation would be installed, as would internal partitions to form the rooms, all of which would be supported by the existing steel frame and concrete base.
9. Paragraph Q.1(i) provides that development is not permitted by Class Q if the development under Class Q(b) would consist of building operations other than (i) 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; and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).
10. Paragraph 105 of the Planning Practice Guidance provides further advice that Class Q permits building operations that 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 dwellinghouse'*. It goes on to say: *'Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q'*.

11. The insertion of windows and doors in the external elevations of the existing building necessary to light the new rooms, the installation of internal insulation including a new floor, and the construction of internal walls are all works that are consistent with paragraph Q.1(i) and the guidance.
12. The Council considers the existing building to be of poor quality, not of a stature that is suitable for conversion, and the works proposed to be undertaken to convert the building to a dwellinghouse would effectively result in a rebuild rather than a conversion of the existing building. It also refers to the guidance in paragraph 105 of the Planning Practice Guidance, which states: *'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'*. On that basis, the Council considers the proposal to fall outside the terms of the permitted development right under Class Q.
13. The application is accompanied by reports from an engineer¹ which state that the building is structurally sound, in good condition, and is able to bear the additional structural loads that the internal works, and insertion of doors and windows in the external elevations, would place on the building. Having regard to these reports and what I saw on my site visit, I have no reason to disagree with that assessment.
14. The external cladding, while utilitarian in appearance, was in generally good condition. There were gaps between the cladding and blockwork walls, and between the walls and roof sheets at eaves level, but these could be filled without major changes to the appearance or function of the cladding. Similarly, openings could be cut out of the cement sheeting and doors and windows inserted and made weather tight using normal building techniques. In any case, paragraph Q.1(i) allows for the installation or replacement of windows, doors, roofs, and exterior walls where reasonably necessary for the building to function as a dwellinghouse.
15. I acknowledge that the addition of insulation to the floor, walls and roof of the building, and construction of numerous internal partitions, would be extensive but would not in themselves be structural. They would not be freestanding or form a self-supporting shell, separate from that of the existing structure. They would be additions to the existing structure rather than its replacement or rebuilding.
16. I conclude that in this case the existing building is capable of conversion, the building operations proposed in the application are reasonably necessary to enable the building to be used as a dwellinghouse, and they do not amount to extensive rebuilding or the creation of a new building. Consequently, the use and associated works are permitted by Schedule 2, Part 3, Class Q of the Order.

Ecologically sensitive areas

17. The site lies within the zones of influence of the Chichester and Langstone Harbours Special Protection Area and Pagham Harbour Special Protection Area.

¹ Peter Wilmott of Archibald Shaw, Civil and Structural Engineers – emails dated 31 March 2020, 15 September 2020 and 11 March 2021.

It is therefore necessary for me to undertake an appropriate assessment under the Conservation of Habitats and Species Regulations 2017.

18. It is possible that the development, when taken in combination with other residential development in the area, could have a significant adverse effect on the ecological value of these sites through additional recreational pressure causing disturbance to rare bird species. Having regard to the foul sewage arrangements proposed for the development, neither the Council nor Natural England consider that the development would have any additional adverse effect on these or other special protection areas through an increase in nitrate pollution.
19. The Council, in partnership with other organisations, has adopted a mitigation strategy that seeks to manage the recreational pressures. The appellant has submitted a unilateral undertaking that provides a financial contribution towards the Council's mitigation strategy. Natural England considers the mitigation strategy to be ecologically sound and, subject to the appropriate financial contribution being secured, is satisfied that the proposal would be adequately mitigated so as to avoid harm to the ecological value of the special protection areas.
20. Having regard to the views of Natural England, and subject to the terms of the unilateral undertaking on which I place weight, I am satisfied that the development would not cause harm to the ecological value of either the Chichester and Langstone Harbours Special Protection Area or the Pagham Harbour Special Protection Area.

Conditions

21. Paragraph W (13) of Part 3 of Schedule 2 of the Order allows for the imposition of conditions reasonably related to the subject matter of the prior approval. I have considered the conditions suggested by the Council in the light of this paragraph and the advice on conditions in the National Planning Policy Framework (the 'Framework').
22. Paragraph Q.2 (3) of the Order requires that the development must be completed within a period of 3 years from the date of this decision. Therefore, there is no need for me to impose this as a separate condition, although for completeness I have referred to it in my decision.
23. There is no need for a condition listing the approved plans, as the Order requires that permitted development is carried out in accordance with the details approved.
24. All the other conditions suggested by the Council, bar one, are not directly related to the subject matter of the prior approval and I see no justification for their imposition in terms of the tests set out in paragraph 55 of the Framework.
25. The condition that is of relevance relates to the submission and approval of means of enclosure for the curtilage of the proposed dwellinghouse. The extent of the curtilage is shown on the submitted plans but there are no details of how this is to be secured. I consider it necessary that the domestic curtilage is so defined on site, to avoid encroachment onto open countryside in the interests of the character and appearance of the area. I have accordingly imposed the condition, suitably modified in the interests of precision.

Conclusion

26. I conclude that the appeal should be allowed and approval granted.

Guy Davies

INSPECTOR