
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/21/3270825

Willowdene, Fletchers Lane, Sidlesham Common, Chichester PO20 7QG

- 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 Mr P Howard against the decision of Chichester District Council.
 - The application Ref SI/20/03159/PA3Q, dated 5 December 2020, was refused by notice dated 29 January 2021.
 - The development proposed is Class Q(a) application for prior approval – change of use from agriculture to 1 no. large dwellinghouse (C3 Use Class).
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr P Howard against Chichester District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was submitted without using an application form. I have taken the date of submission as being that stated on the subsequent appeal form.
4. 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. I comment further on the undertaking under other matters.

Main Issues

5. The main issues are:
 - whether the proposed development falls within the terms of the permitted development right under Schedule 2, Part 3, Class Q;
 - whether it exceeds size limitations for residential conversion of buildings on the agricultural unit under paragraph Q.1(b);
 - whether prior approval should be granted, having regard to the effect of the design or external appearance of the building on the character and appearance of the countryside; and
 - the effect of the development on ecologically sensitive areas.
-

Reasons

Permitted development

6. The permitted development right under Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – hereinafter referred to as ‘the Order’ - allows the change of use of an agricultural building and any land within its curtilage to a dwellinghouse, subject to various limitations and conditions as set out in paragraphs Q.1 and Q.2 of that Class.
7. Inherent in the operation of that permitted development right is that the development involves the conversion of an existing building. As expressed in paragraph 26 of the case of *Hibbitt*¹, ‘... the concept of “conversion” is found in the overarching provision of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a “conversion” then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1’.
8. Guidance contained in paragraph 105 of the Planning Practice Guidance advises that ‘... the [permitted development] right assumes that the agricultural building is capable of functioning as a dwelling’ and ‘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’. This advice follows on from the judgement in *Hibbitt*, which addressed the difference between conversion and rebuilding or, as the judge termed it, a fresh build.
9. In this instance, the proposed use would be contained within a structurally independent building within the existing glasshouse. It would be built on the existing concrete floor slab, but in all other respects would take no support from the frame of the glasshouse. Although glazing in the roof of the glasshouse would remain over the new structure, it would have its own roof, albeit according to the appellant not a watertight one. These structural aspects are confirmed in the structural report² accompanying the application, which notes that: ‘The proposed dwelling will be formed by building partitions and ceilings within the existing structure and totally independent of it such that no additional load or support is applied. The proposed partitions and ceiling support only their own self weight plus insulation included to provide improved ‘U’ values’.
10. In my view this does not amount to the conversion of the existing agricultural building in the sense of making use of it as a dwellinghouse, but rather the construction of a new building within it. The existing glasshouse would remain but it would play little part structurally or functionally in the construction of the new building, which would be freestanding and supporting its own weight. Whether the existing glasshouse is structurally sound is not an issue in this appeal; it is a matter of fact and degree that the existing frame of the glasshouse would play no part in supporting the new building.

¹ *Hibbitt et al v SSCLG and Rushcliffe BC* [2016] EWHC 2853 (Admin)

² Archibald Shaw, Consulting Civil and Structural Engineers - letter dated 20 August 2019

11. The appellant has argued that the proposed development amounts to a change of use only, and that no physical works requiring planning permission are required, as all building operations would be internal and would not therefore amount to development in themselves³. Paragraph 105 of the Planning Practice Guidance concludes by saying that: *'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'*.
12. I do not accept this argument. Section 55(2) of the Town and Country Planning Act 1990 provides that: *'the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building'* do not constitute development. However, the internal works proposed go far beyond the *'maintenance, improvement or other alteration'* of the glasshouse; instead amounting to a freshly built building within it. For the reasons I have set out, I do not consider the appeal scheme to amount to a conversion of the existing building.
13. The appellant has drawn attention to 4 examples where prior approval has been granted for the conversion of glasshouses to dwellinghouses under Class Q⁴. In all these cases the schemes incorporated the structural frames of the glasshouses in support of replacement walls, roofs, doors and windows, unlike the appeal proposal, and were held at the time to be conversions of the existing buildings. A fifth example⁵ relates to where planning permission was granted for a rebuild and is therefore less relevant to this appeal. In contrast, the Council has drawn attention to 2 decisions⁶ where applications for prior approval to convert glasshouses were dismissed on appeal on the basis that the works involved exceeded those which were reasonably necessary to convert the buildings to dwellinghouses.
14. There are differences in the individual circumstances of each case, including in some cases differences between the design and construction of the glasshouses. It is also relevant that judgements on whether the proposals were conversions or rebuilds/fresh builds have changed over the period these decisions were made, because of changes in case law and national planning guidance. For those reasons, and while I have had due regard to the examples quoted, they carry only limited weight in my decision, which must be based on the particular merits of the appeal scheme, case law and national planning guidance as it currently stands.
15. I conclude that, because the proposed development would be a largely freestanding structure supporting its own weight, it would not amount to a conversion of the glasshouse. The development would therefore not fall within the scope of the permitted development right applicable under Schedule 2, Part 3, Class Q of the Order.

³ The appellant's argument is supported by Counsel's advice provided on an earlier application for prior approval under Class Q for the same building.

⁴ Windward Nursery, Sidlesham (SI/15/00747/PA3Q); Orchid Answers Limited, Batchmere (E/15/01472/PA3Q); Jamic Nursery, Sidlesham (SI/15/03067/PA3Q); 82 Fletchers Lane, Sidlesham (SI/17/01135/PA3Q).

⁵ Windward Nursery, Sidlesham (SI/19/00801/FUL).

⁶ APP/L3815/W/18/3219563 (Butskiln Farm, Sidlesham) and APP/L2250/W/17/3183118 (Widespan, Brookland, Kent)

Other Matters

16. Given my conclusion on the first main issue, there is no need for me to consider the remaining issues of whether the development would exceed the size limit under paragraph Q.1(b), whether to grant prior approval, or whether there would be a likely significant effect on the Chichester and Langstone Harbours Special Protection Area and/or Pagham Harbour Special Protection Area. For the same reason, I have also not considered the submitted unilateral undertaking any further.

Conclusion

17. I conclude that the proposed development does not amount to a conversion of the agricultural building within the terms of Class Q, and consequently the appeal should be dismissed.

Guy Davies

INSPECTOR