



Appeal Decision

Site Visit made on 10 August 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2021

Appeal Ref: APP/N4205/W/21/3275963

Eskamara, Pocket Nook Road, Lostock, Bolton BL6 4HW

- 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 D Bird against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 10727/21, dated 11 March 2021, was refused by notice dated 6 May 2021.
 - The development proposed is prior notification application, under class Q(b), for change of use of an agricultural building to 3no. dwellinghouses with associated building work and demolition of adjacent building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the Council's consideration of the application the description appearing on the prior notification application form was amended by agreement. The revised description is that appearing in the banner heading above and includes reference to demolition works.
3. For the purposes of the appeal, the appellant has provided additional evidence seeking to substantiate the agricultural use of the site for the rearing of cattle. This information was not before the Council when it made its decision. Although the Procedural Guide to Planning Appeals – England is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application, the additional information does not alter the proposal for which prior approval was sought. Nor does it change the stance of the appellant when he submitted the application.
4. Having regard therefore to the Wheatcroft Principles, the extent of consultation carried out by the Council and the nature of the additional information, I find that no party would be prejudiced by my consideration of it in the appeal process. I have proceeded on that basis.
5. There are some minor inconsistencies between the elevational plans and the existing development on the ground. Additionally, some references to the elevations within the structural report are mis-stated against the actual orientation of the building. I have accounted for these discrepancies in my consideration of the appeal and have considered the building as-built.

Main Issues

6. The main issues are:

- whether the development would be permitted development for the purposes of the Order, having regard to the limitations listed in paragraph Q.1 of Class Q, with particular regard to the use of the site on or before the relevant date of 20 March 2013, and the necessary building operations for the building to function as 3 dwellings
- if the development falls within the scope of Class Q(b), whether or not prior approval would be required in relation to the matters of contamination risks on the site and the location or siting of the building with particular regard to noise and odour.

Reasons

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

7. The building is a portal framed shed with twin gable ends. Various parts of its elevations are enclosed by blockwork or concrete panels from ground level with timber or metal cladding above. The roofs consist of corrugated fibre sheeting. Save for an internal personnel doorway, the building is divided along its centreline from front to back. The building stands within a yard area accommodating other functional agricultural buildings and structures.
8. There is dispute between the main parties as to the status of the use of the building on, or before, 20 March 2013 being the relevant date to establish the building's sole agricultural use for the purposes of Class Q, or, whether an agricultural use has been supplanted since that date. Although the Council suggest that the northern half of the building was previously used in conjunction with the keeping of horses, there is little substantive evidence before me to demonstrate that this was the case. There is limited evidence in relation to the specific building altogether, however, the evidence of the appellant - through the signed application form and Herd Register, confirms an agricultural use on the site since 2006 to beyond 2013.
9. At the time of my site inspection, albeit only a snapshot in time, the building was being used to house calves in addition to machinery that could be used in conjunction with an agriculture enterprise. Furthermore, having regard to the extent of neighbour consultation, there were no representations indicating anything other than an agricultural use on the site. Notwithstanding that the proposal is the fourth in a run of similar proposals, some of which were refused on the grounds of failure to demonstrate the building's use, on the balance of evidence before me, I have little reason to doubt the appellant's claim. I therefore find that, in the circumstance of the case, the criteria at Q.1(a) is met.
10. The Order 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 external walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations.

11. The Order does not define what constitutes 'reasonably necessary' for the purpose of Part Q development. However, in this regard the main parties have directed me to the findings in the Hibbitt judgement¹. Here it was 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 the effective creation of a new building. Whether the building operations go beyond the scope of conversion is a matter of planning judgement to be considered on the individual merits of the case. Although the appellant contends that the building in the Hibbitt case is not comparable to the subject building, there is little evidence to support that position.
12. The Planning Practice Guidance² (PPG) states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. In this respect, 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, would be permitted. However, the PPG also clarifies that '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'. The nature and extent of the proposed building operations are therefore a relevant consideration in making that assessment.
13. The appeal building is of substantial and permanent construction. At my site visit, the steel framework, lower blockwork and concrete panel walls appeared in good condition. This is consistent with the findings of the structural report by Paul Snape Consulting (June 2020).
14. The proposal would require the removal of almost half of the existing building to facilitate the residential use. Paragraph Q.1(i)(ii) of Class Q provides for the partial demolition of a building to facilitate specified building operations. Notwithstanding that the part of the building to be demolished would be extensive, in the absence of any definitive threshold suggesting otherwise, the removal of a large part of the building would fall under that provision.
15. In addition, the proposal would see the removal of the entire roof covering, the cladding to the upper parts of two external walls and the existing central wall, and the removal of existing blockwork to facilitate a significant number of new openings in three of the existing elevations.
16. New works would include the recladding of the upper elevations and a new roof covering which, according to the report, would likely require new purlins. In addition, the report indicates that the proposal would require new foundations to support structural elements independent of the steel framework and a new floor to replace the existing compacted rubble floor. The entirety of the external walls would be provided with an internal skin to form an insulated cavity wall. The new openings would be fitted with glazing, the majority of which would extend to the full height of the respective elevations.

¹ Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

² Reference ID: 13-105-20180615

17. The proposals would lead to the replacement of the majority of the elevational area. Taken with the new roof, floor, foundations and significant degree of demolition, I find that, as a matter of planning judgement, the degree of works to facilitate the residential use of the building would be substantial. In effect, although the buildings framework and minor elevational elements would be retained, the major part of the resultant building would be new-build and tantamount to a new building. The proposed works would therefore go beyond what might be regarded as 'reasonably necessary' for the building to function as a dwellinghouse for the purposes of Class Q(b). Accordingly, the proposal would not benefit from the permitted development rights under Schedule 2, Part 3, Class Q(b) of the Order.
18. Despite its conclusion in relation to Part Q1 of Class Q, the Council has proceeded to assess the proposals against the Conditions in Class Q2. However, as I have determined that the proposal does not meet the provisions of Part Q1 it is not necessary for me to comment further in relation to the relevant Part Q2 conditions.

Conclusion

19. For the above reasons, I conclude that the proposal is not permitted development within Schedule 2, Part 3, Class Q(b) of the Order. The appeal is therefore dismissed.

R Hitchcock

INSPECTOR