



Appeal Decision

Site Visit made on 10 August 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2021

Appeal Ref: APP/F2415/W/21/3270900

**Agricultural Building, Debdale Lane, Smeeton Westerby, Market
Harborough LE8 0QD**

- 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 William Arnold against the decision of Harborough District Council.
 - The application Ref 20/01899/PDN, dated 24 November 2020, was refused by notice dated 14 January 2021.
 - The development proposed is change of use of an agricultural building to a dwellinghouse (Class C3) (1 larger dwellinghouse) and for building operations reasonably necessary for the conversion.
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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) for change of use of an agricultural building to a dwellinghouse (Class C3) (1 larger dwellinghouse) and for building operations reasonably necessary for the conversion at Agricultural Building, Debdale Lane, Smeeton Westerby, Market Harborough LE8 0QD in accordance with the application 20/01899/PDN made on 24 November 2020, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 paragraphs Q(a) and Q(b) subject to the conditions set out in the Schedule to this decision.

Applications for costs

2. An application for costs was made by Mr William Arnold against Harborough District Council. This application is the subject of a separate Decision.

Procedural Matter

3. I have taken the description of development set out in the banner Heading from the Decision Notice, as this better reflects the scheme that is before me and that which the Council considered. However, I have omitted superfluous information that does not form part of the description of development.

Main Issue

4. The main issue is whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 3, Class Q of The

Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), with particular regard to Paragraph Q(b) building operations reasonably necessary to convert the building.

Reasons

5. The appeal building is a detached structure with a split ridge, incorporating a lower element to its northern side. It is constructed of wooden poles sunken into the ground and encased in concrete. These are arranged at its corners and throughout the building. The external corrugated metal cladding is affixed to horizontal timber rails between the poles, and extends from the eaves to the ground, but is not fixed into the ground. The timber poles also support the timber trusses and purlins for the corrugated metal roof cladding.
6. It is not the intention of Class Q 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. With this in mind, the rights allow for a scope of building works that has an implicit limitation, including the installation or replacement of windows, doors, roofs, and exterior walls.
7. From a structural perspective, despite concerns outlined by the Council, I have no reason to doubt the findings of the appellant's Site Inspection Report. In particular, that the walls would be suitable for use in the development or that only minimal repairs would be likely to be required to some parts of the wall and roof cladding of the building. In any event, I am mindful that the Planning Practice Guidance (PPG) no longer requires demonstration of the structural strength of the building to accommodate external works to adapt the building for residential use; nor does it prohibit the construction of new structural elements for the building; and it also adds that internal works, including new floors and internal walls, are not prohibited by Class Q.
8. The Council has raised the judgement in *Hibbitt*¹, which is referred to in the PPG. As I understand it, that case also involved a building with walling that did not appear to be attached to the ground and which would have been replaced in its entirety with structural infill panels. This contrasts with the appeal before me, where all external walling is proposed to be retained, apart from some small areas that require repair. Openings would then be cut into the cladding for windows and doors and internal walling added behind.
9. In light of the above, the Council's assertions that these openings are likely to lead to the removal and replacement of cladding and the internal walling would require structural support from the building are not supported by any substantive evidence. In particular, it is common for internal walling not to be structural to buildings so this could be erected without affecting the external fabric of the building. Likewise, the inclusion of doors and windows within the existing openings to the east side of the building would also not be indicative of rebuilding work.
10. Accordingly, I conclude that the works required as part of the proposed development would not go beyond building operations reasonably necessary to convert the building to enable it to function as a dwellinghouse. The proposal

¹ *Hibbitt and another v Secretary of State for Communities and Local Government* (1) and *Rushcliffe Borough Council* (2) [2016] EWHC 2853 (Admin).

would therefore not exceed the limitations set out in paragraph Q.1(i) of the GPDO.

Other Matters

11. The Parish Council dispute that the appeal building was occupied for agricultural purposes on 20th March 2013 or is still in use as an agricultural building, as required by Paragraph Q.1(b) of the GPDO. However, the Council was satisfied that this point had been demonstrated by the appellant and there is no substantive evidence before me to lead me to a different conclusion.

Conditions

12. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval.
13. A number of alterations to the external appearance of the building are proposed, as such a condition requiring details of the external materials has been imposed in order to ensure a satisfactory appearance of the building.
14. The Officer Report (OR) indicates that visibility from the proposed access would be acceptable and that the Highway Authority does not have any record of personal injury collisions in the five years preceding October 2020. Nevertheless, given the proximity of the access to Debdale Lane, it would be reasonable and necessary for a planning condition to be used to ensure that the gates to the access are set back five metres from the carriageway. This would enable vehicles to wait clear of the carriageway before entering the gates. However, I observed on my site visit that the access track was already hard surfaced, albeit partially overgrown, so it would not be necessary for a hard surface to be added adjacent to the carriageway.
15. The Council also indicates that there could be potential contamination risks to human health associated with the historic use of the site. I have therefore taken a precautionary approach to these matters and included conditions to provide an assessment of the risks associated with the site and to remediate any contamination identified. I have omitted the tail piece requiring alternatives to be approved by the Council, as this would circumvent the normal route to provide those details.

Conclusion

16. For the reasons given above, the appeal is allowed and prior approval is granted.

Paul Thompson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Prior to their use in the development hereby granted, specifications / samples of the materials to be used in the construction of the external surfaces of development shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved specifications/samples.

- 2) Prior to the first occupation of the development hereby granted, the gates to the vehicular access from Debdale Lane shall be set back a minimum distance of five metres from the edge of the carriageway and thereafter retained at that distance.
- 3) No development (except any demolition permitted by this permission) shall commence on site until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
 - BS10175:2011+A2:2017 Investigation Of Potentially Contaminated Sites Code of Practice;
 - BS8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs); and
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; or
 - Any documents which supersede these.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and
- BS 8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings; or
- Any documents which supersede these.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004;
- BS 8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings; and
- CIRIA C735, "Good practice on the testing and verification of protection systems for buildings against hazardous ground gases" CIRIA, 2014; or
- Any documents which supersede these.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on

that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such thereafter.

- 4) Prior to occupation of the completed development, or part thereof, either
- a) If no remediation was required by Condition a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development, or part thereof, is received and approved in writing by the Planning Authority, or
 - b) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to the whole development, or part thereof, shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall contain:
 - a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
 - Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
 - Test Certificates of imported material to show that it is suitable for its proposed use;
 - demonstration of the effectiveness of the approved Remedial Scheme; and
 - a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

END OF SCHEDULE