
Appeal Decision

Site Visit made on 31 August 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/Y3940/W/21/3275752

Land at Westwood, Elms Cross, Nr Bradford-on-Avon BA15 2AL

- 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 T Earl against the decision of Wiltshire Council.
- The application Ref PL/2021/04022, dated 22 March 2021, was refused by notice dated 17 May 2021.
- The development proposed is described as, "Class Q conversion of agricultural building".

Decision

1. The appeal is dismissed.

Application for costs

2. The appellant made an application for costs. This application for costs has been dealt with in a separate decision.

Preliminary Matters

3. The description of development given in the planning application form is, "Please see supporting correspondence". Therefore, the description of development provided in the banner header above has been taken from the application cover letter (dated 22 March 2021). This differs from that shown on the appeal form and decision notice. The latter identifies the proposed development as the, "Notification for Prior Approval under Class Q for a Proposed Change of Use of Agricultural Building to One Dwellinghouse (Use Class C3) and for Associated Building Operations". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms. It does not fundamentally alter the development which is the subject of this appeal.
4. 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) (GPDO), planning permission is granted for the conversion of agricultural buildings to dwellinghouses subject to limitations and conditions. In this instance, the Council refused to grant prior approval in respect of paragraph Q.1(i) and paragraph Q.(b), making reference to the scope of the building operations proposed and the provision of amenity and garden curtilage.

Main Issues

5. The main issues are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, having particular regard to:
 - whether the building operations proposed would be reasonably necessary for the building to function as a dwellinghouse; and
 - whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change use, with particular reference to the provision of private amenity space.

Reasons

Building Operations

6. The agricultural building, the subject of this appeal, is located on the slope of a hill, in a field, near to the western boundary of the appeal site. The site is surrounded by agricultural land.
7. The proposed residential conversion would involve a number of works, including the erection of a replacement roof, partial replacement of the external timber cladding, new walls, and partial demolition of a section of the existing building. A new floor in parts of the building would also be required. In particular, the south elevation and part of the north elevation would need to be filled-in, and it is noted that some of the roof and parts of the exterior cladding are currently in poor condition. Nevertheless, all these works either fall within the ambit of Q.1(i) or are internal works which would not constitute development.
8. On this basis, whilst I recognise that the extent of the proposed works could not sensibly be described as minor and that some demolition is proposed, all these works appear reasonably necessary for the building to function as a dwellinghouse. For the same reasons, I find no conflict with the principle established in *Hibbitt v SSCLG*¹ which held 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, in effect, the creation of a new building. On this basis, I find no conflict with Q.(b).
9. Nonetheless, although compliance with Building Regulations would be required, in order to assess the total extent of the necessary works at this stage, it is crucial to determine whether the agricultural building would be structurally capable of functioning as a dwelling. In this regard, I have considered the Structural Report provided² (BTA report). The 'original building' (as named in the BTA report) contains timber posts at the corners and spaced along the 2 sides and the rear wall, and there is also a central post in the open front elevation.
10. An interested party has claimed that these posts are over 20 years old, that they had been decommissioned for safety, and that they previously showed significant signs of dry rot. Whilst I cannot definitively determine if this is the case, I am mindful that the internal composition of timber can vary, due to knots (for example), resulting in a weakening of the material. In this context, the BTA report was based on a visual inspection only and no exposing work

¹ [2016] EWHC 2853

² BTA Structural Design Ltd (date of inspection: 24 November 2020)

was carried out, but despite this, it has not been made clear in the main body of the report what the margin for error might be with respect to the calculations provided.

11. Consequently, the lack of any interior analysis of the state of the timber means that I am not persuaded by the calculations provided. In particular, I consider that the BTA report does not provide adequate assurance that the resulting new residential dwelling could withstand all the likely loads which might be placed upon it, such as snow and also high winds which may buffer the sides of this building which is situated in an exposed location on a hill. Hence, I cannot be sure that the totality of the works proposed would be all that would be required for the building to safely function as a dwelling.
12. Taking account of all of the above, I therefore find that the building operations proposed would not be reasonably necessary for the building to function as a dwellinghouse. As such, the proposal would conflict with Q.1(i) of Class Q of Part 3 of Schedule 2 of the GPDO.

Private Amenity Space

13. The proposed new 3-bedroom dwelling would be capable of being occupied by a family. Under Q.2(1)(e), it is necessary to consider whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change use. In this respect, the proposal would provide little garden space for the future occupiers of the new dwelling. Nevertheless, the GPDO defines the extent of the curtilage for the purposes of Class Q and it accordingly follows that a curtilage that falls within that extent must be deemed suitable with respect to the living conditions of the intended future occupiers of the proposal.
14. The potential for an encroachment of parking / domestic use onto the surrounding land is speculative and in any event this matter cannot set aside the provisions of the GPDO. An interested party has made reference to a planning permission for a dog day care facility but as very minimal information has been provided as to the scale of the operations involved, this matter does not change my findings.
15. With regards to parking, I agree with the Inspectors in the appeal decisions referred to by the appellant that there is no requirement within the GPDO for access or parking to be included within the curtilage. The appellant has identified the proposed curtilage, and on the evidence before me, I am satisfied that its size meets the requirements of the GPDO. I therefore find that the location or siting of the building does not make it otherwise impractical or undesirable for the building to change use, with particular reference to the provision of private amenity space. As such, the proposal would comply with Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO.

Conclusion

16. Although I have found that the proposal would comply with Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO, as the proposal would not comply with Q.1(i), prior approval cannot be given for the proposal. For the reasons given above, the appeal is dismissed.

Alexander O'Doherty INSPECTOR