



Appeal Decision

Site Visit made on 27 September 2021

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Ref: APP/X0360/W/21/3268513

Woodlands Farm, Bath Road, Knowl Hill, Reading, RG10 9UP

- 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 Alex Hunt, Macniven Quays Limited against the decision of Wokingham Borough Council.
 - The application Ref 201480, dated 17 June 2020, was refused by notice dated 11 August 2020.
 - The development proposed, as described on the application form, is change of use of agricultural Nissen building and land within its curtilage to a Class C3 (dwelling houses) use and proposed associated building operations reasonably necessary to convert the building under Town and Country Planning (General Permitted Development)(England) Order 2015 as amended Schedule 2, Part 3, Class Q. For description of siting and location, please see submitted location plan and covering letter.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Alex Hunt, Macniven Quays Limited against Wokingham Borough Council. That application is the subject of a separate decision.

Procedural Matters

3. In July 2021 an amended National Planning Policy Framework was published. Neither the appellant nor the Council had any comments when given the opportunity to make them.
4. The development is described slightly differently on the decision notice but for consistency I have used the description from the application form.
5. The appellant has raised concerns about the appeal process. It appears the Council may not have sent the Statement to the appellant. However, the Statement, including Appendices 3.1, 3.2 and 3.3, was received by the Planning Inspectorate by the due date and was copied to the appellant on the following day. The Council has confirmed there was no separate Appendix 3; rather it was separated into three documents because of the file sizes. These provided information relating to Pre-application Request 173743, and the Rebuttal Statement clearly addresses this matter. There was a Bank Holiday during the period for the appellant to submit Final Comments. However, the appellant did not request an extension of time and submitted Final Comments

before the due date. Taking all the above into account I consider no prejudice has arisen for the appellant as a result of the timescales.

6. Under Article 3(1) and Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) planning permission is granted for the change of use of agricultural buildings and any land within its curtilage to dwellings together with building operations reasonably necessary to convert the building (permitted development right). This is subject to conditions and limitations. The Planning Policy Guidance (the PPG) provides interpretation of the GPDO.
7. The GPDO enables a local planning authority to refuse a prior approval application where the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, the relevant conditions, limitations or restrictions. The Council considers it has not been demonstrated: that the existing building was solely in agricultural use for an agricultural trade or business on or before 20 March 2013; that new structural elements would not be necessary or that the required works would not be more than reasonably necessary; or that sufficient evidence has been provided to show that contamination risks have been adequately addressed.

Main Issues

8. The main issues are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO; and if so, whether prior approval should be granted for the proposed development.

Reasons

Whether the proposal would be permitted development

9. Under Paragraph Q.1.(a) the permitted development right would not apply if "*(a) the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20th March 2013 (the relevant date), or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use*". Part X of Schedule 2, Part 3 of the GPDO explains that an agricultural building is one used for agriculture and for the purposes of a trade or business. Accordingly the building must solely be an agricultural building and the use must not have changed to another by the time that an application under Class Q is considered.
10. The appeal site is an approximately 'L' shaped building and the areas of hard standing around it. The building is a part single part double arched Nissen style building. The existing floor plan shows the building as part milking parlour, part byre; part farm store; and part barn. There is no relevant planning permission for the building but the Council advises it appears to have existed at least since 1986 and is immune from enforcement action. A greenhouse and workshop, which were on the hardstanding, have been removed.
11. The Planning Statement submitted with the application says that Woodland Farm, as identified on the accompanying site location plan, was purchased in 1927 by a former tenant and was farmed until the death of his grandson in 2015. This plan included the appeal building in the land holding. The farm was later enlarged and a plan associated with the conveyance BK364702 shows the

- extent of the farm in 1951. In the fifties and early sixties the need for an agricultural worker on the land justified a dwelling for such a worker.
12. Woodland Farm includes a number of dwellings and land used by the cricket club. The appeal site is within a flat largely grassed area within the larger Woodland Farm land holding. It is not necessary for Class Q that the whole of the land holding be used exclusively for agriculture and it can be deduced from the agreement with the Cricket Club that the adjoining land was in agricultural use in February 1978, although there is no conclusive evidence of the extent of that adjoining land at that date. The General Accident Insurance renewal receipt indicates there was an agricultural business in 1985. The farmer may have been involved in the Whitehall Brick and Tile Works at Arborfield, but this appears to have been dissolved in 1995 and does not prove there was no business or trade at Woodlands Farm.
 13. Statements made by third Parties, accompanied the application; subsequently a Declaration dated January 2021 was submitted with the appeal. These indicate that in March 2013 and since August 2013 the appeal building was still in use as a milking parlour; for storage of agricultural equipment and for livestock as part of Woodland Farm; and that Woodland Farm was actively farmed including cows and sheep and producing haylage until very shortly before the death of the farmer in 2015. Agricultural use at Woodlands Farm is also indicated by the auction of agricultural machinery by the executors of Woodland Farm in 2015. Unlike in appeal Ref APP/X1118/W/20/3260797 there is no conclusive evidence to counter the statements that the building was used for agriculture. Caselaw has held that the appellant's own evidence does not need to be corroborated by "independent" evidence, particularly if it is unchallenged, in order to be accepted¹. In this case the evidence is by third Parties but in the absence of evidence to the contrary I see no compelling reason to discount it.
 14. The appellant purchased the site after the death of the farmer. The grass around the appeal site has been cut. I see no reason to doubt the appellant's assertion that it was cut for haylage. There are mature trees alongside parts of the grassed area, which is fenced but has no gate. It is open to the track and to adjoining grassland where I saw deer grazing in an ungated field.
 15. The Council considers there are inconsistencies in some of the evidence, such as whether the farmer was described as retired on the death certificate; whether properties were rented; and whether the building was used for milking or livestock housing. None of these potential inconsistencies, nor the aerial images submitted by the Council showing the building in grassland with greater or lesser degrees of tree cover around it, which is not dissimilar to the position at my site visit, seem to me to preclude that the building was in agricultural use in association with Woodland Farm on the relevant date.
 16. The Council has been unable to trace registration of a business at Companies House and have found no tax records of business at Woodlands Farm. However, not all businesses are companies that would be registered at Companies House. No detailed evidence such as receipts, invoices, bank statements, Veterinary Health Checks, stock details customers or information from professional bodies have been provided. However, it seems to me that

¹ Gabbittas v. Secretary of State for the Environment and Newham Borough Council (Queen's Bench Division, His Honour Judge Dobry Q.C., July 4, 1984)

such information may be difficult to obtain in the circumstances of the death some years ago of the former farmer.

17. At the time of my visit the building was predominantly empty other than a few items of old plant/machinery that appear likely to have been for agricultural activities. It seems to me that the existing building was constructed for agricultural purposes as evidenced by the curved upstands plinths and feeding troughs to parts of the external walls. There is some, albeit limited, evidence that it was used as part of an agricultural holding most likely as part of a business for many years. The farming operation may have declined to a limited small scale personal operation, but there is no stipulation regarding the size of the agricultural unit and commercial viability is not a prerequisite.
18. There is some evidence to suggest that items unlikely to be typically associated with agriculture such as a mattress, boxes, containers, timber and other materials, and which may have been associated with Cooks Hill Cottage, were stored in the building between 2018 and 2020. However, there is no planning permission for a storage use; I have seen no evidence of enforcement action being commenced by the Council; there was no non-agricultural storage taking place at the time of my site visit; and little evidence of any functional link with Cooks Hill Cottage. Accordingly I cannot conclude that a material change of use sufficient to supersede agricultural use has occurred.
19. On the balance of probabilities I conclude, from the Declaration and my observations at my site visit, that the appeal site was used solely for an agricultural use as part of an established agricultural unit on the relevant date.

Works

20. The PPG explains that the permitted development right assumes that the agricultural building is capable of functioning as a dwelling. 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 is a matter of fact and degree and requires an element of judgement. The building has electrical power but because of the gaps in the cladding, the lack of a surfaced floor in the barn area, and the lack of insulation the building cannot be described as in good order or watertight, unlike in cases elsewhere, and would not be capable of functioning without considerable works.
21. The second reason for refusal is that it has not been demonstrated that the existing structure could support the additional load or that the required works would be limited to building operations reasonably necessary to convert the building in accordance with Class Q(b) and Paragraph Q.1(i). The former permits the installation or replacement of windows, doors, roofs, or exterior walls, and water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The PPG adds that it is not the intention of the permitted development right to include the construction of new structural elements for the building.
22. The Structural Survey and Report undertaken on behalf of Macniven Quays Limited Revision - 006 updated in June 2020 (the Report) was not a full structural survey. For this appeal the Report is supplemented by a letter dated 2 February 2021 describing the proposed construction methodology. The building contains significantly more constructed areas than a typical Nissen style agricultural building, such as solid brick walls to dado height throughout

- the milking parlour, byre and store and with timber supported dormer windows placed between the steel frames. The gable end walls of the building are partly open sided and partly clad with timber and corrugated metal sheeting.
23. The Report concludes there is surface corrosion of the unpainted steel framework but it is unlikely that its integrity had been compromised. The base connections conditions are described as good although some of the pre-cast concrete plinth foundations were found to have rotated. The foundations of the masonry walls were not inspected and the Report recommends a Geo-Technical investigation to determine the underlying soil conditions and potential shrinkability of any underlying clay soils and to determine depth and width of existing foundations.
24. A Phase 1 Geo-Environmental Appraisal was carried out with a walkover survey in April 2019. This appears to have focussed primarily on the potential for contamination and potential need for mitigation measures. The potential for shrinking or swelling clay ground stability hazards on the site and surroundings is indicated to be moderate and it the recommendation in this respect is that these geotechnical hazards should be investigated further. The appellant would agree to a condition regarding a Phase 2 Phase 2 Geo-environmental study to take place prior to commencement of development. However, to my mind more certainty on this point is necessary before I could confidently conclude that substantial works to the foundations would not be necessary. Excavation and installation of foundations are not in the list of permitted operations set out in the PPG and based on the evidence I cannot confidently conclude that the required works would be limited to building operations reasonably necessary to convert the building.
25. A localised breakout has demonstrated that the feeding trough upstands in the milking parlour could be removed without degrading the floor slab. However, the Report finds that generally timbers, including those forming the gable ends, timber plates below brickwork, and the junction between the wall and curve of the roof in the barn area, are poor and it is recommended that further investigation would be required of the timber purlins. There is cracking on some walls and localised spalling damage to brick faces. The low-level corrugated iron cladding to the exterior was described as heavily corroded and would need to be replaced. Approximately 70% of the modern galvanised sheeting, including most of the curved roof, is in good condition although there are undulations to the roof sheeting indicating some differential deflection.
26. The Report concludes that the main steel frames are sufficient to support cladding and the proposals include repainting existing cladding but with new cladding as required. It is estimated that approximately 70% of the external galvanised cladding is in good condition and is suitable for re-use. However, the older cladding is in less good condition, and as there is timber cladding in places, this seems unlikely to equate to 70% of all the external materials being suitable for re-use. I also note that the Report advises that the "new insulated wall and roof linings will sit inside of the existing steel frames and will need to be self-supporting. The existing steel frames should be tied to the new internal structural elements to also assist in mitigating the effects of wind deflection."
27. In the absence of more detailed information regarding exactly which parts of the steel frame and the roof and external walls would be retained and a fully detailed explanation of structural works needed I cannot confidently conclude

that the required works would be limited to building operations reasonably necessary to convert the building. Moreover, even if some of the works fall within those listed in Q.1(i) of the GPDO or in the PPG, in the Hibbitt judgement² it was held that: "...the concept of "conversion" is found in the overarching provisions 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. It is thus a freestanding requirement that must be met irrespective of anything in Q.1."

28. These matters require the exercise of judgement and in my view the nature and extent of the works are such that the proposal would amount to a 'fresh build' with only a modest amount of help from the original agricultural building as set out in the Hibbitt judgement. Accordingly the proposal would not be permitted development.
29. I have found insufficient information to confidently conclude the proposed development complies with the relevant conditions, limitations or restrictions at Class Q(b) and Paragraph Q.1(i). I conclude the proposal does not benefit from the permitted development right at Schedule 2, Part 3, Class Q of the GPDO.
30. The third reason for refusal related to contamination risks on the appeal site. As I have found that the proposal does not benefit from the permitted development right it is unnecessary and inappropriate for me to proceed to further consider whether prior approval should be granted. However, I note that the Environmental Control Officer has advised that an "unexpected contamination" condition would be sufficient to address the matter.

Other Matters

31. The current proposals seek to address the concerns of the Council raised in two earlier applications for prior approval that were withdrawn. However, that in itself does not make the current proposal acceptable.
32. The appellant has referred to a similar proposal at Highfield Barn where the Council granted prior approval. However, each case needs to be considered in terms of its own evidence. In that case, unlike in the appeal before me, the Council found there was no evidence that the building operations would be unreasonable, so that decision does not lead me to any different conclusion.
33. The appellant has also expressed dissatisfaction with the way in which the Council has handled the planning application, in particular due to insufficient site visits before assessments were made. However, I have reached my own conclusions based on all the evidence before me including my observations during my site visit. The appellant undertook a pre-application enquiry and the advice given at that stage was not reflected in the decision on the application. However, such advice cannot be binding on the Council.

Conclusion

34. For the reasons set out above I conclude the appeal should be dismissed.

S Harley INSPECTOR

² Hibbitt v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (the Hibbitt judgement)