



Appeal Decision

Site visit made on 21 September 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/D0515/W/21/3273670

Barn adjacent to Willow Farm, Euximoor Drove, Christchurch, PE14 9LP

- 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.
 - The appeal is made by Mr N Russell against the decision of Fenland District Council.
 - The application Ref: F/YR20/0870/PNC04, dated 11 September 2020, was refused by notice dated 10 November 2020.
 - The development proposed is a change of use from agricultural building to a single storey 1-bed dwelling with storage above (Class Q (a) and (b)).
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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) (the Order) for a change of use from agricultural building to a single storey 1-bed dwelling with storage above at Barn adjacent to Willow Farm, Euximoor Drove, Christchurch, PE14 9LP in accordance with the terms of the application, Ref: F/YR20/0870/PNC04, dated 11 September 2020, and the details submitted with it, including plan numbers ..., pursuant to Article 3(1) and Schedule 2, Part 3, Class Q and subject to the following conditions:-
 - 1) The finished floor level of the building shall be 0.3metres above existing ground level and a 0.3metres of flood resilient construction above finished floor level.
 - 2) Any contamination that is found during the course of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on that part of the site affected shall be suspended (unless otherwise agreed in writing by the local planning authority) and a Method Statement carried out and submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the Method Statement.

Applications for costs

2. An application for costs was made by Fenland District Council against Mr N Russell. This application is the subject of a separate Decision.

Preliminary Matters

3. For the sake of clarity and brevity I have used the description of development from the Council's decision notice. This revised description better reflects the

wording in the Order and more appropriately describes the proposed development, I have therefore considered the appeal on that basis as no party would be prejudiced or caused any injustice by me taking this course of action.

4. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021 and the parties have been provided an opportunity to comment on the implications of this for their case.
5. A similar application¹ was made to the Council and refused on the 18 May 2020. This application was accompanied with a structural report² dated 28 April 2020.

Background and Main Issue

6. The application was made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (GPDO). Class Q permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order and any building operations reasonably necessary to convert the building. Prior approval for the change of use of an agricultural building to one dwelling was sought.
7. The main issue is whether the proposed development would consist of building operations other than the installation of windows, doors, roofs or exterior walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.

Reasons

8. Class Q permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order³ and any building operations reasonably necessary to convert the building. It is common ground that the building is or was previously in use for agricultural purposes.
9. Paragraph Q(1)(i) places restrictions on the building operations which can be undertaken and in particular, it states that development is not permitted if it would consist of building operations other than: i) the installation or replacement of- (aa) windows, doors, roofs or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building operations.
10. Paragraph 105 of the Planning Practice Guidance⁴ provides further clarification. It states 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. It follows that it is only in instances where the existing building is structurally strong enough to take the loading which comes with the external works to provide for the residential use that the building would be considered to have the permitted development right.

¹ Planning Reference F/YR20/0286/PNC04.

² Absolute Consulting Engineers Ltd, dated 28 April 2020.

³ SI 1987/764 The Town and Country Planning (Use Classes) Order 1987 (as amended).

⁴ Reference ID:13-105-20180615

11. The application was accompanied by a structural report (SR)⁵. This report concluded that *'the building appears to be in a fair condition and with some degree of strengthening work, is considered satisfactory for conversion to a dwelling'*. At point 11 of the SR, it states that the foundations have been *'exposed and confirmed as 600mm wide x 300mm concrete deep on silts achieving an allowable ground bearing pressure of around 75kN/m²'*. Although the SR goes on to confirm that an assessment of the loading at foundation level yields a pressure comfortably within *'acceptable limits'*, it provides little information detailing the additional load that would be associated with the residential use.
12. Nevertheless, an updated structural report⁶ (the updated SR) has been provided by the appellant during the course of this appeal and the Council have been provided with an opportunity to comment upon it. Notwithstanding the list of likely remedial works quoted within the SR, the updated report confirms the structural performance of the building including all four components; purlins, scissor truss, foundations and wall construction. It concludes that no further strengthening would be necessary as all principal components are stated to possess a utilisation ratio below 1. Whilst I have had regard to the concerns of the Council, it does not appear that the Council has carried out any similar assessment nor have they viewed the foundations and therefore on the basis of the evidence provided I find there is no proper basis on which to dispute the Appellant's evidence. To my mind, the evidence satisfactorily demonstrates the structure is capable of bearing the load required for conversion.
13. Reference is made within the SR to buttressing during the period of construction. However, as a temporary measure it does not persuade me that there is an underlying problem that precludes the building from being structurally strong enough to support the conversion of the building to residential use. Moreover, the horizontal cracking within the north west corner of the building, which the Council believed to be caused as a result of subsidence, is expressly excluded from being so within the SR and an explanation as to its cause provided by the structural expert, which I find to be credible.
14. Nonetheless, a demonstration of the load bearing capacity of the structure is insufficient to meet the requirement of Part Q in this case. Consideration must be given to the extent of the works proposed to ensure that the proposed works would not be so extensive as to constitute the construction of a new building.
15. The existing building is largely enclosed on all sides with the exception of steel doors within a large opening on the proposed front elevation which provides access into the building. It is mainly comprised of brick walls with some panels of corrugated steel and a corrugated steel roof. The existing masonry would be largely retained and repointed. The opening currently covered by sheet steel would be bricked up and cracking noted to the upper level gable end at the level of the wall plate would be rebuilt as part of the door infill works. Although the roof material would be replaced, the existing purlins and trusses would be retained as part of the appeal scheme, save for the replacement of the timber truss. The wall plate would be repaired where any deterioration is found to have occurred and new doors and windows would be inserted together with a

⁵ Absolute Consulting Engineers Ltd, dated 10 September 2020.

⁶ Absolute Consulting Engineers Ltd, dated 8 March 2021.

modest sized internal first floor to provide storage and safe refuge from flooding.

16. Having regard to the extent of the works required, I do not consider that these would amount to 're-building' nor would they exceed what could reasonably be regarded as a conversion. In my view, the proposed works amount to either installation works or replacement and they would not be so extensive as to constitute the construction of a new building nor would the nature of the works imply that the building would not be capable of functioning as a dwelling.
17. I am mindful of the differences between the SR, the updated SR, and the original structural report⁷ which accompanied the previous application. However, it is not uncommon for the opinion of an expert to change over time based upon further site investigations, as is stated to have occurred in this case⁸.
18. Furthermore, in reaching my view I have had regard to the *Hibbitt*⁹ judgement, however, as this development concerned the construction of all four exterior walls it was held to go well beyond what could reasonably be described as a conversion. As such, the *Hibbitt* scheme is not directly comparable to the appeal proposal and a comparison is of limited relevance in this instance. I have determined the appeal before me on its individual planning merits.
19. For the above reasons, I conclude that the proposal would not consist of building operations other than the installation of windows, doors, roofs or exterior walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.

Other Matters

20. I have had regard to the comments of interested parties. As planning is concerned with land use in the public interest, the protection of purely private interests such as the impact of a development on the value of a neighbouring property and issues concerning access for construction are not material considerations in this instance. Although reference has been made to health issues, very limited information has been provided to me to make any detailed assessment of these.

Conditions

21. The Council have suggested a number of conditions and I have considered these against the advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency or clarity.
22. Development under Class Q is permitted subject to the condition that development under Class Q(a) and (b) must be completed within a period of 3 years starting with the prior approval date. Therefore, it is not necessary for me to impose a condition relating to this matter as it is expressly referred to within the Order.
23. A condition requiring finished floor levels is necessary to safeguard against the risk of flooding and a condition dealing with unexpected contamination is necessary to safeguard public safety and the interests of the environment.

⁷ Absolute Consulting Engineers Ltd, dated 28 April 2020.

⁸ Statement of Case (Council) Appendix 2, email of Simon Lemmon dated 4 December 2020.

⁹ *Hibbitt v SSCLG* [2016] EWHC 2853

Conclusion

18. For the reasons given above, and having regard to all other matters raised, the appeal is allowed and approval granted.

E Brownless

INSPECTOR