



Appeal Decision

Site visit made on 25 January 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2022

Appeal Ref: APP/D3125/W/21/3280183

Fir Tree Farm, Main Road, Barnard Gate, Witney OX29 6XE

- 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 and Mrs Kirk against the decision of West Oxfordshire District Council.
 - The application Ref 21/02152/PN56, dated 10 June 2021, was refused by notice dated 2 August 2021.
 - The development proposed is the change of use from agricultural barn to dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be permitted development, with particular regard to whether the requirements of Class Q(b), Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) would be met, and;
 - Whether the requirements of Class Q(a) would be met having particular regard to the proposed curtilage of the dwellinghouse and the provisions of Paragraph X, Part 3, Schedule 2 of the Order.

Reasons

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

3. Class Q(b) of the Order permits building operations reasonably necessary to convert the relevant building to a use falling within Class C3. It further 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 exterior walls, or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse.
4. The agricultural building in question is of a functional design and is sited on a concrete slab. I observed it to have profiled metal sheeting to the four walls and polyfibre cladding to the roof with some translucent sections. Limited information is provided in relation to the structural condition of the building,

but it appeared to be in a reasonably good condition commensurate with a rural working building.

5. The plans¹ indicate that the proposed dwelling would have a standing seam zinc roof and walls primarily comprising of horizontal anthracite grey fibre board with cement. In addition, new fenestration would feature in all four elevations. Hence, based on the information before me, nearly all of the external fabric of the building would be replaced.
6. Additionally, a comparison of the existing and proposed floor plans indicates that further works would provide insulation to the walls, as well as providing a first floor and internal dividing walls. Although Planning Practice Guidance (PPG) confirms that internal works are not of themselves generally development, they nevertheless contribute towards the overall works proposed in this case. Accordingly, cumulatively, the works proposed amount to extensive building operations.
7. PPG² advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling, clarifying that it is not the intention of the permitted development right in Class Q(b) to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. In this respect the PPG refers to relevant case law³ to which I have had regard.
8. The caselaw established that Class Q(b) only permits building operations necessary to convert the building, and therefore if a development does not amount to a conversion then it fails at the first hurdle, even though the building operations may fall within those listed in paragraph Q.1(i). Furthermore, whether a proposal constitutes a conversion or a rebuild is a matter of planning judgement and the nature and extent of the proposed building operations are a relevant consideration in making that assessment.
9. In this case, from my own observations and the information provided, the cumulative extent of the works proposed to facilitate a residential use would be extensive. In my view, the works would be of such magnitude that they would go beyond what might reasonably be described as a conversion, as in practical terms, the proposed development would effectively start afresh with only a modest amount of help from the original agricultural building.
10. As the appellants point out, the Order does not mandate that the resultant dwelling must use the existing skin of the building to fall within the remit of permitted development. Nevertheless, the extent of replacement building fabric does have a bearing on the judgement concerning whether an individual proposal constitutes a conversion or a rebuild, which is a central issue in this case.
11. Therefore, I find that the development proposed would go beyond building operations reasonably necessary to convert the building into a dwellinghouse and as such, would not benefit from the permitted development rights under Schedule 2, Part 3, Class Q(b) of the Order.

¹ Proposed Elevations, Drawing No. 09 Revision E

² Paragraph 105 Reference ID: 13-105-20180615

³ Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

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

12. Class Q(a) refers to the permitted development concerning the change of use of a building and any land within its curtilage. Paragraph X of the Order provides a definition of the term 'curtilage' for the purposes of the permitted development under Class Q of the Order. This states that curtilage means '*(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser*'.
13. The illustrative layout provided⁴ shows a red line that contains the building (annotated as 116.4m²), an area to the rear (annotated as private amenity space 114m²) but also a large area of hardstanding to the front as well as the access drive. Although the appellants confirm that the access road and parking courtyard does not need to be in the red line, in the absence of any other clear labelling to denote the proposed curtilage, it is reasonable to suppose that this is what the red line purports to show. It is apparent that the area contained within the redline on the drawing is considerably larger in extent than the footprint of the existing barn. Whether or not the Council referred to this point in a previously refused prior approval application has little bearing on my finding based on the plan presented to me.
14. Had there been no other substantive concerns with the proposal, then this is a discrepancy that might have been addressed by imposing a condition under paragraph W(13) of the Order to establish a reduced residential curtilage that met with the definition within paragraph X. Nevertheless, based on the information provided, the curtilage shown on the proposed plans exceeds the definition given in paragraph X of the Order. It follows that the proposal would therefore fall outside the extent of the permitted development described in Class Q(a) of the Order.

Conclusion

15. For the reasons given and based on the evidence presented, I conclude that the proposal would not constitute permitted development within Schedule 2, Part 3, Class Q of the Order. The appeal, is therefore, dismissed.

Helen O'Connor

Inspector

⁴ Drawing number 02 Revision A