
Appeal Decision

Site visit made on 11 January 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2022

Appeal Ref: APP/X3540/W/21/3274988

Barn A, Land adjacent Former Woodbarn Cottages, Seckford Hall Road, Great Bealings, Suffolk, IP13 6NX

- 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 Sharma against the decision of East Suffolk Council.
 - The application Ref DC/20/4032/PN3, dated 7 October 2020, was refused by notice dated 27 November 2020.
 - The development proposed is Prior Notification - Conversion of an agricultural building to a dwelling house pursuant to Class Q of Part 3 of Schedule 2 of the Town and Country Planning.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Sharma against the decision of East Suffolk Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description of development given within the appeal form and decision notice as it most accurately describes the proposed development.
4. The appellant has withdrawn drawing no 316-3-03.09.2020 as part of the appeal, in order to overcome a number of discrepancies between that drawing and drawing no 320-1.25.09.2020 identified by the Council. Therefore, I have taken into account only the details shown on drawing 320-1.25.09.2020.

Main Issues

5. The Council is concerned that the proposal is not permitted development because the building was not in agricultural use and that insufficient information has been provided to show the extent of the holding and that the works required to convert the building go beyond what is reasonably necessary for the building to function as a dwellinghouse.
6. Accordingly, the main issue in this case is whether or not the proposal would be permitted development under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

7. Schedule 2, Part 3, Class Q of the GPDO permits development consisting of (a) 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 (dwellinghouse) of the Schedule to the Use Classes Order; and (b) building operations reasonably necessary to convert the building. This is subject to a number of limitations where such development is not permitted, listed under Paragraph Q.1.

Whether in Agricultural Use

8. Schedule 2, Part 3, paragraph Q.1(a) of the GPDO rules that development carried out under Class Q is not permitted where the site was not used solely for an agricultural use as part of an established agricultural unit on (i) 20 March 2013, 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. Paragraph X of Schedule 2, Part 3 of the GPDO defines agricultural use as a use for the purposes of a trade or business. S336(1) of the Town and Country Planning Act 1990 (the Act) defines agriculture for this purpose.
9. The Council originally considered that the evidence from an earlier appeal¹ and documents submitted as part of historical planning applications² implied that at the time the application was submitted the site was not in active agricultural use. However, the appeal building need only be in an agricultural use as part of an established unit on the relevant date or if it is not, when it was last in use, to qualify under Class Q. Contrary to the Council's view on this matter, it does not require a building to be in active agricultural use on the relevant date.
10. The appeal building was clearly constructed for agricultural use and retains large openings to allow machinery to enter the building. Moreover, the evidence provided by the appellant as part of their appeal statement indicates that the buildings were subject to an agricultural tenancy and occupied by someone carrying out an agricultural business on the relevant date.
11. I note from my site visit that the building is currently being used for the storage of materials, possibly arising from the construction of the dwellings on the adjacent site. Whilst the lawfulness of the current use of the building appears to be in doubt, I am satisfied that the building was in agricultural use on the relevant date or its last use was such and therefore, the proposal complies with paragraph Q.1 (a).

Other development in the agricultural holding

12. The Class Q permitted development rights cannot be exercised where works to erect, extend or alter a building for the purposes of agriculture under the existing agricultural permitted development rights have been carried out on the established agricultural unit since 20 March 2013, or within 10 years before exercising the change to residential use, whichever is the lesser.
13. The appellant considers that the agricultural unit is defined by the agricultural holding which existed on the relevant date (20 March 2013) at the time when the building was part of an agricultural tenancy.

¹ APP/J3530/W/17/3166437

² C/12/0484 & C/13/0676

14. An agricultural unit is defined under Part 6 of the GPDO as agricultural land which is occupied as a unit for the purposes of agriculture, including (a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit, or (b) any dwelling on that land occupied by a farmworker.
15. The submitted Farm Business Tenancy includes plans of the wider holding dated March and September 2008 which was owned by the tenant and extended to over 150 acres. This notes that the tenancy extends to 12 acres, including the two grain stores.
16. The evidence submitted by the appellant in the form of a prior notification statement, indicates that the submission complies with the relevant parts of Class Q and that this is sufficient to demonstrate that the permitted development rights apply to the building allowing its residential conversion.
17. However, the letter provided within the appellants statement as evidence to the agricultural tenancy in 2012/2013 indicates that if they were to vacate the premises that there would be a need for storage capacities to be increased or the upgrading of other buildings. It is not stated whether this was within the same agricultural holding. A further letter to the appellant from the tenant dated 24 September 2013 also refers to applying for planning permission for a new grain store. This would seem to imply that works have taken place within the agricultural unit. The appellants submissions are therefore contradictory and imprecise.
18. Accordingly, in this case, there is insufficient evidence to confirm the extent of the agricultural unit in 2013 and whether any development has taken place which would preclude the permitted development.

Extent of building operations

19. The GPDO 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 external walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations.
20. The Planning Practice Guidance (PPG) states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. In this respect, building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission, would be permitted. However, the PPG clarifies 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 is only where the existing building is already suitable for conversion that the building would be considered to have the permitted development right.

21. The main parties have referred me to the Hibbitt judgement³, which considers the interpretation of “reasonably necessary” in Class Q. In Hibbitt, it was 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. It also provides a detailed assessment of the differences between conversion and re-building.
22. The judge in the Hibbitt case stated that there will be numerous instances where the starting point (the “agricultural building”) might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild and the development sought was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. It is a matter of judgment, for the decision maker, to establish in each case where the line is drawn, by considering the type and extent of the works proposed in terms of whether a proposal amounted to a conversion rather than a re-build.
23. The appeal relates to a metal framed agricultural building with large openings within its front façade with corrugated sheeting on either side. The appellant has submitted a structural report, by HJ Structural Engineers April 2021 which confirms that the barn is structurally sound. The existing structural frame would remain in place and provide the main load bearing element of the building.
24. However, the submitted structural inspection report notes that in order to achieve the conversion of the building, replacement infill panels would be affixed to the existing steel frame and that these panels would have both insulation and structural qualities. It is also noted that the existing roof would be replaced, noting the presence of asbestos within the existing corrugated sheets on the roof and walls.
25. Taking all these points together, these elements form a substantial part of the buildings façade and would result in only the skeletal frame of the building remaining. Very little of the existing building would be utilised which I consider goes beyond a conversion and what could be considered reasonably necessary for the building to function as a dwelling house.
26. Taken as a whole, I consider the existing building would not be able to function as a dwelling. The works required would be significant, as they result in the construction of external walls and are necessary to alter the original appearance and purpose of the building. I consider that the works outlined result in the substantial re-building of the pre-existing structure and cumulatively, the extent of the works required would extend beyond the building operations reasonably necessary to convert the building to residential use under Class Q.

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

27. This is also the conclusion that previous Inspectors have come to when considering the conversion of this barn to a residential dwelling⁴, where both Inspectors came to the view that the extent of the works required would go beyond those reasonably necessary. Whilst each appeal must be determined on its own merits, my findings are consistent with those previous appeals.
28. In order to benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must involve only building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i). Based on the evidence before me, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q.

Other Matters

29. The appellants have cited an appeal relating to the nearby 'Barn C'⁵, which was allowed, and that the extent of the works permitted are very similar to those proposed in that appeal. I have also been provided with a copy of the Costs decision which awarded costs against the Council, on the grounds of unreasonable behaviour.
30. This costs decision makes reference to inconsistent decision making with the Council having found the replacement of walls to be acceptable in other proposals, and not the one before them. The Costs application also details how the Council had made reference to other proposals at Barn A as part of their defence of the appeal at Barn C. The Inspector concluded the proposals and appeal decisions at Barn A had limited direct relevance to the appeal at Barn C and therefore it could also be concluded that the appeal at Barn C has limited direct relevance to Barn A.
31. I note that the appeal before me at Barn A does differ to those previously considered, with the extent of demolition being much less. I have also had regard to the fact that the proposals at Barn A and Barn C are now more closely aligned in terms of their external appearance. However, each proposal must be considered on its own merits and the appeal decision cited in footnote 3 makes no reference to Hibbitt and therefore I can not be certain that this judgement was considered as part of the evidence before the Inspector.
32. As confirmed by Hibbitt, it is a matter of judgment, for the decision maker, to establish in each case based on the evidence before them where the line is drawn, by considering the type and extent of the works proposed in terms of whether a proposal amounted to a conversion rather than a re-build. Therefore, for all of the reasons outlined above my findings are not inconsistent with those of the Inspector who dealt with the appeal at Barn C.
33. Given my conclusion that the proposal would not be permitted under Schedule 2, Part 3, Class Q.1 of the GPDO, there is no need for me to consider the proposal against the conditions set out in Class Q.2(1)

⁴ APP/J3530/W/17/3166437; APP/J3530/A/14/2229019

⁵ APP/J3530/W/17/3169488

34. The appeal site falls within a 'Zone of influence' for the European designated sites of the Deben Estuary SPA and Ramsar, Sandlins SPA and the Stour and Orwell Estuaries SPA and Ramsar site. Natural England has provided advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on designated sites are compliant with the Habitats Regulations.
35. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to establish whether the Regulation 77 process under the Conservation of Habitats and Species Regulations 2017 had been followed, and the pre-commencement condition imposed under Article 3(1) pursuant to Regulation 75 had been complied with. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

36. For the reasons given above I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR