



Appeal Decisions

Site visit made on 8 March 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2022

Appeal A Ref: APP/Y1138/W/21/3289099

Cob Barn (east of Growen Farm), Growen Lane, Cullompton, Devon, EX15 1NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on a prior notification application for the determination of prior approval under Article 3(1) and Schedule 2, [Part 3, Class Q, Paragraph A.4] of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mrs V Scoble against Mid Devon District Council.
- The application Ref 21/00582/PNCOU, is dated 23 March 2021.
- The development proposed is the conversion of an existing agricultural building to two dwellings, including replacement of existing block curtain walling with stone, insertion of windows and doors, making good the roof covering.

Appeal B Ref: APP/Y1138/X/21/3289141

Growen Lane, Cullompton, Devon, EX15 1NH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs V Scoble against the decision of Mid Devon District Council.
- The application ref 21/01504/CLP, dated 20 July 2021, was refused by notice dated 24 September 2021.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is change of use and conversion of agricultural building to two dwellings, with associated operational development.

Decisions

Appeal A Ref: APP/Y1138/W/21/3289099

1. The appeal is allowed and prior approval is deemed to be granted.

Appeal B Ref: APP/Y1138/X/21/3289141

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is found to be lawful.

The appeal site and relevant planning history

3. The appeal site is in open countryside on the east side of Growen Lane opposite the main farmhouse. The barn (known as Cob Barn) has a footprint of approximately 164sqm and internal floor area over two storeys of about

222sqm. It is constructed of cob and blockwork with an open side. Adjacent to the open side is an access way lying between the appeal building and a further dilapidated farm building to the north. This area is shown as proposed garden areas within the curtilage of the building.

4. Applications for the conversion of the barn to a dwelling and for B1 use were refused in 2002 and 2003. A prior notification for the change of use to two dwellings was withdrawn in February 2018.

Reasons

Appeal A

5. For Appeal A, the main issue is whether the proposed development satisfies the conditions and limitations of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
6. The appellant considers the proposed development to be lawful by dint of the provisions of Class Q of Part 3 of Schedule 2 of the GPDO
7. It is argued that the Council's failure to issue a decision on the prior notification application within the prescribed period means that the requirements of Condition Q.2 are deemed to have been discharged and the development can proceed as it is not excluded by the limitations set out in paragraph Q.1(i).
8. Class Q of the GPDO permits the change of use of an agricultural building to a dwelling together with building operations reasonably necessary to convert the building subject to certain limitations and conditions. The proposed development is not prohibited by the exclusions set out in paragraph Q.1.(a) – (m) and this is not contested by the Council, other than in respect of criterion (i).
9. Paragraph Q.2. requires that an application must be made to the local planning authority for a determination as to whether prior approval of the authority will be required as relating to a number of matters. Article 7 of the GPDO sets out the time period within which the application should be made, which in this case is 8 weeks although there is provision for a longer period as may be agreed by the applicant and the authority in writing. As the appellant points out in his email of 20 May 2021 to the Council, there was no agreement to an extension of time between the parties¹ and that he was able to proceed with the development subject to compliance with the conditions and limitations of Class Q.
10. The Council informed the appellant in writing that the prior approval of further details was required thereby extending the determination to 18th June 2021. The application had been received by the Council on 23rd March 2021 and the letter requesting further details was dated 18th May 2021, indicating that prior approval must be determined by 18th June 2021. The decision notice is dated 17th June 2021 and set out the reasons why the proposals were not considered as permitted development, being *"The Local Planning Authority considers that given the nature of the construction of the existing building and the likely scope of building operations required to facilitate its use as a dwelling, the existing building is not considered to be suitable for conversion to residential use via a Class Q application. The proposed scheme is not considered to be a conversion and in practical reality would amount to a fresh build contrary to the guidance*

¹ Gluck v SSHCLG & Crawley BC [2020] EWHC 161 Admin)

established by the Planning Practice Guidance and the Hibbitt Case. On this basis the proposal conflicts with the requirements of Class Q, part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and prior approval is refused. Planning permission will therefore be required should you wish to pursue the change of use."

11. Although Part 3, paragraph W(9) of the GPDO, provides for a local planning authority to request additional information required to determine an application and this can include details of proposed building and other operations, such a request does not 'stop the clock' on the statutory determination period unless there is a written agreement between the parties. If an authority requests additional information, but does not receive it, they should issue a refusal before the end of the period in order to avoid the deemed grant of prior approval.
12. Where an LPA fails to issue a refusal in the statutory period on an application as to whether prior approval is required, the principle established in Murrell² holds good. The appeal should be allowed on the basis that prior approval is deemed to be granted by the GPDO, which is my conclusion based on the evidence before me in this appeal.
13. I therefore intend to allow Appeal A and prior approval is deemed to be granted. However the development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact permitted development that satisfies the limitations and conditions of Class Q.

Appeal B

14. I consider the main issue in Appeal B to be whether the Council's decision to refuse to grant an LDC was well founded. In enforcement and LDC cases where legal matters are argued, the onus of proof rests with the appellant and the level of proof is on the balance of probability.
15. The appellant summarises the scope of the proposed building operations as
 - i) Retention and localised repairs to the south, east and west elevations, with insulation provided internally;
 - ii) Removal of the makeshift infill to the originally open north elevation and replacement with an insulated infill wall;
 - iii) Retention of the existing 'A-frame' roof trusses, removal of the corrugated tin roof covering, and replacement with an appropriate insulated alternative with interstitial support, as necessary.
16. The basis of the Council's refusal is similar to that in respect of Appeal A in that the building works required would be extensive and beyond that which would be regarded as a conversion as permitted by Class Q due to the condition of the open-fronted linhay in cob, rubble stone, render and timber. The Council considers it likely that vertical beams supporting the frontage will require replacement, and the roof is not structurally capable of taking the load of a new domestic roof, and is likely to require extensive replacement including purlins, trusses and principal rafters, as well as the roof covering. No information has been supplied to assess the integrity of the existing stone and

² Murrell and Murrell v SSCLG and Broadland DC [2010] EWHC 1045 Admin

- cob walls, without which the extent of what needs to be replaced cannot be understood.
17. The appellant has submitted an updated structural survey of the building³, dated 11th November 2021, which amends the previous version dated November 2017. Paragraph 3.02 reaches a different conclusion in respect of the existing roof structure and the recommendation at paragraph 4.3 now refers to the existing purlins needing to be supplemented (rather than replaced as previously recommended) and the existing trusses altered to provide sufficient headroom (rather than being retained), although the appellant at the site inspection said that it is not now the intention to increase the headroom.
 18. At paragraph 4.05, it is now recommended that the southern section of the west wall should have foundations extended (rather than underpinned) below the existing ground level.
 19. Paragraph 105 of the Planning Practice Guidance regarding Class Q states *"However, the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits 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. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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. 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."*
 20. In *Hibbitt v SSCLG & Rushcliffe BC* [2016] EWHC 2853 it was established that for permitted development rights to be engaged under Class Q the building must be capable of conversion without complete or substantial re-building or, in effect, the creation of a new building. It is accepted that Hibbitt concerned an open-sided metal framed agricultural building but that case established that it is necessary to assess the extent of the works and decide whether they fall within or go beyond the statutory limits.
 21. Although the structural report states that the construction of the building is generally sound, it nevertheless requires considerable work to achieve a satisfactory conversion. Notwithstanding this, the key issue is whether the operational development identified by the appellant is reasonably necessary for conversion to residential use. Whilst I understand the reason for the Council's caution on the proposed development, they did not comment on the updated report, preferring to rely on comments on the earlier report. The proposed works appear to be reasonably necessary for the appeal building to function as a dwelling and are not of such magnitude as to qualify as a rebuild. As the appellant makes clear, if the scope of the works exceed those identified in the submitted details, then it may be necessary for a further application to be made.

³ Barn 3 at Growen Farm, Report on Structural Condition Barry Honeysett, Consulting Engineers, December 2021

22. Indeed, if substantial demolition and rebuild occurred, this would be outside the scope of Class Q and no planning permission would exist for the works carried out and the appellant would be at risk of enforcement action.
23. The details submitted with the appeal, including those shown in the sketch proposals⁴, together with the December 2021 structural survey, indicate on the balance of probability that the conversion would satisfy the conditions and limitations of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
24. For the reasons given above I conclude that the appeal should be allowed.

Conclusions

Appeal A Ref: APP/Y1138/W/21/3289099

25. For the reasons given above I conclude that the appeal should be allowed.

Appeal B Ref: APP/Y1138/X/21/3289141

26. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of change of use and conversion of agricultural building to two dwellings, with associated operational development was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended

P N Jarratt

INSPECTOR

⁴ Drawing No 1218/12 Rev E as annotated to indicate the retention of three walls and infilling around the existing structure of the fourth wall; and Drawing No 1218/13 Rev E.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 July 2021 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would satisfy the conditions and limitations of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended and would therefore be permitted development.

Signed

P N Jarratt

Inspector

Date: 30 April 2022

Reference: APP/Y1138/X/21/3289141

First Schedule

Change of use and conversion of agricultural building to two dwellings, with associated operational development.

Second Schedule

Land at Growen Lane, Cullompton, Devon, EX15 1NH

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 April 2022

by P N Jarratt BA (Hons) DipTP MRTPI

Land at: Growen Lane, Cullompton, Devon, EX15 1NH

Reference: APP/Y1138/X/21/3289141

Scale: Not to Scale

