



Appeal Decision

Site visit made on 26 July 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2022

Appeal Ref: APP/R0660/W/22/3296556

Price Poultry Farm, Green Lane, Poynton SK12 1TJ

- 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 James Price against the decision of Cheshire East Council.
 - The application Ref 22/0128M, dated 11 January 2022, was refused by notice dated 10 March 2022.
 - The development proposed is described as 'prior approval for the change of use of an agricultural barn to five dwellinghouses'.
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Decision

1. The appeal is dismissed.

Main Issue

2. Class Q(a) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order. Class Q(b) of the GPDO permits building operations reasonably necessary to convert the building referred to in (a) above.
3. Where development is proposed under Class Q(a) together with Class Q(b), and the proposed works are found to be permitted development, it is subject to the condition under Paragraph Q.2(1) that before beginning the development, an application must be made to the Local Planning Authority for determination as to whether prior approval is required with regards to (a) transport and highways impacts, (b) noise impacts, (c) contamination risks, (d) flooding risks, (e) location and siting, (f) the design or external appearance and (g) the provision of adequate natural light in all habitable rooms.
4. The Council considers that the cumulative total of the building works proposed to facilitate the residential use would fail to comply with the limitations set out in paragraphs Q(b) and Q.1(i) of the GPDO. The Council's decision notice also includes further reasons for refusal in relation to the effects of the proposal on the design and external appearance of the building, flood risk and protected species.
5. Given the above, the main issues are:
 - Whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, with particular regard to whether the

development would consist of building operations reasonably necessary to convert the building to residential use, as described within Q(b) and Q.1 (i)

- The effect of the proposal on the design and external appearance of the building, and whether sufficient information has been provided so to demonstrate that there would be no adverse flood risk impacts; and
- The effect of the proposal on protected species.

Reasons

Permitted Development

6. The Planning Practice Guidance (PPG) states that the right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. The right also includes the carrying out of building operations which are reasonably necessary to convert the building. The PPG however 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'*.
7. Paragraph Q.1(i) of Part 3, Schedule 2, Class Q of the GPDO places restrictions on the building operations which can be undertaken. 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 allowed by paragraph Q.1(i)(i).
8. In terms of what is 'reasonably necessary', the Hibbitt judgment¹ establishes that the scale of the proposed building works is key. To be permitted under Class Q the building works would, among other things, need to be of a scale which would fall within the scope of a 'conversion' rather than go beyond that so as to amount to a rebuild or fresh build. Whether or not the proposed works go beyond the scope of conversion is a matter of planning judgement with reference to the circumstances of the case.
9. The existing building is a large red brick agricultural barn with a pitched corrugated roof which was previously used as a chicken shed. The building has a long and narrow rectangular footprint and is single storey in height, with the exception of a double storey central portion. At the time of my site visit the building was vacant and it appeared disused.
10. The Structural Survey Report by Hale Surveys dated 2 September 2021 concludes that the building is in a '*poor state of structural repair*'. In particular, the roof structure would require complete renewal in the future regardless of the intended use of the building. The internal brick piers providing support for the single storey roof structure would require repairs and reinstatement, areas of external walls have suffered from movement and are out of plumb, and areas of brickwork have displaced or collapsed with localised reconstruction being required. The survey advises however that, subject to undertaking

¹ Hibbitt and another v Secretary of State for Communities and Local Government, Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

necessary structural remedial works, the building is considered suitable for the proposed change of use. Notwithstanding the above, the report makes clear that only a visual inspection took place, and no openings were formed, or trial holes excavated to ascertain the ground conditions or inspect the foundations.

11. The building operations proposed include the complete replacement of the roof, various brickwork repairs and replacement, the creation of new windows and openings, the installation of new walls, and the demolition of narrow sections of the building to create gaps between some of the proposed properties. The appellant contends that all of these works fall within the scope of Part 3 Class Q, and do not exceed those building operations specifically listed under paragraph Q.1(i).
12. I acknowledge that individually, none of the identified proposed works would appear to fall outside of the operations given in paragraph Q.1(i). It does not however automatically follow that all such operations should be carried out on each development or that cumulatively they could not go beyond what would be considered 'reasonably necessary' for the conversion of the building.
13. It is clear from the submitted plans that the building would be radically altered and redesigned. The demolition of sections of the structure to create gaps in the existing building would result in the creation of several detached buildings. These new buildings would require new gable end walls with foundations, new roofs, and the creation of windows and doors. Whilst some of the proposed building operations, such as the installation of windows and doors, may in isolation amount to works which would be reasonably necessary, I find that the proposed works are so extensive that they would go beyond what could be described as building operations reasonably necessary to convert the existing agricultural building.
14. Indeed, when considering the totality of the work, a significant proportion of the existing building would either be lost or rebuilt. Furthermore, given the extent of the works and that the structural survey was a visual inspection and it did not inspect the foundations, I cannot be certain that any further works would not be necessary to what would remain of the structure. As such, I find that scale of the proposed works would go beyond the scope of a conversion and would represent a fresh build.
15. Accordingly, 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 of the GPDO.

External Appearance and Flood Risk

16. For the reasons given above, I have concluded that the proposed development is not permitted under Class Q. I therefore have no need to consider the further issues in terms of the criteria contained within Q.2(1) (a) to (g) inclusive of the GPDO.

Protected Species

17. The Council raised ecological concerns as a reason for refusal on the basis that the proposed development would have an adverse impact upon protected species, with particular regard to the presence of bats.

18. While it is acknowledged that protected species are not specifically referred to in the GPDO, paragraph Q.2(1)(e) of the GPDO does require consideration of whether the location or siting of a building makes it otherwise impractical or undesirable to create a dwellinghouse. Additionally, under the Conservation of Habitats and Species Regulations 2017, the Local Planning Authority has a general duty to consider whether protected species may be affected by development. Accordingly, I do not consider it unreasonable for the Council to have considered such matters in order to ensure that the Regulations would not be breached.
19. A bat survey² was submitted as part of the application which concluded that, given the presence of a day roost of soprano pipistrelle bat, a European Protected Species licence from Natural England would be required to undertake the proposed works. The survey report includes proposals for mitigation and compensation. It concludes that the works would not have a detrimental effect on the maintenance of bat populations and therefore Natural England would be likely to issue a licence.
20. However, the Council remains of the view that Natural England would be unlikely to grant a protected species licence in this instance. Irrespective, as I have concluded that the development is not permitted under Class Q it is not necessary for me to consider the impact on protected species.

Other Matters

21. My attention has been drawn to an appeal decision³ where the Inspector accepted partial demolition of the building to assist in reducing the floor space of the proposed dwellinghouses to a level which would not exceed the limits set out in the GPDO. Although I do not have the full details of that case before me, it would appear that the demolition related to part of the end of the building and it did not sub-divide the building into separate detached units. This would be a fundamental difference from the appeal proposal. Additionally, previous decisions taken by the Council on applications which may have included partial demolition in a similar vein to the appeal scheme do not alter my finding that the proposal would not constitute permitted development.
22. The appellant has also referred to an appeal decision⁴ where significant parts of the walls and roof of the existing barn had collapsed, and extensive works were required to rebuild the barn. The Inspector concluded that the proposed rebuilding works would fall within the operations permitted under the GPDO. I do not have the full details of that case, however the rebuilding and reinstatement of that building does not appear directly comparable to the extent of works proposed in this case that would go beyond the rebuilding and the reinstatement of the appeal building. In any event, I am required to reach conclusions based on the individual circumstances of this appeal.

Conclusion

23. For the reasons set out above, I conclude that the proposal would not constitute permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore dismissed.

² Bat Survey by Ardea Ecology Ltd, Dated 15 September 2021

³ Ref APP/R0660/W/19/3236843

⁴ Ref APP/M0933/A/14/2221968

David Jones

INSPECTOR