
Appeal Decisions

Site visit made on 19 July 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal A Ref: APP/L1765/W/22/3290825

Barn 1, Lower Shawlands, Hursley, Winchester SO21 2LQ

- 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 I Bajar against the decision of Winchester City Council.
 - The application Ref 21/02396/PNACOU, dated 13 September 2021, was refused by notice dated 12 November 2021.
 - The development proposed is to convert agricultural barn 1 to residential Class Q development.
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Appeal B Ref: APP/L1765/W/22/3290829

Barn 2, Lower Shawlands, Hursley, Winchester SO21 2LQ

- 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 I Bajar against the decision of Winchester City Council.
 - The application Ref 21/02395/PNACOU, dated 13 September 2021, was refused by notice dated 12 November 2021.
 - The development proposed is to convert agricultural barn 2 to residential Class Q development.
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Decisions

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. As set out in the banner above, there are two appeals on this site. The proposals differ in the size, siting and detailed design of the proposed dwellings. I have considered each appeal separately, however, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
3. There is no description of the proposed development in the application forms. I have, therefore, taken the descriptions in the banner above from the Council's decision notices. These were also used in the appeal forms.

Background

4. Class Q(a) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 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)¹. Class Q(b) permits building operations reasonably necessary to convert the building.

5. Development is not permitted by Class Q if under paragraph Q1(i), the development under Class Q(b) would consist of building operations other than (i) the installation or replacement of (aa) windows, doors, roofs, or exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse²; and (ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q1(i)(i).
6. The Council considers that the proposed development in both appeals would not be a conversion of the existing building to a dwelling but a rebuild. As such, the Council considers that the proposed development would not be permitted development within the scope of Class Q(b).

Main Issues

7. In light of this background, the main issues in both appeals are:
 - whether the proposed development would be permitted development under Class Q(b), including whether the limitations in paragraph Q1(i)(i)(aa) and (ii) would be met; and
 - if it would be permitted development, whether prior approval should be granted having regard to the conditions set out at paragraph Q2(1)(a) to (g).

Reasons

Permitted development

8. The appeal site is a remote parcel of land in the countryside between Hursley and Winchester accessed by a rural lane. It is undeveloped aside from two modern agricultural buildings — Barn 1 in Appeal A and Barn 2 in Appeal B. The site and these agricultural buildings were part of the Hursley Estate, then in separate agricultural use latterly, though did not appear to be in active agricultural use at the date of my site visit. The proposed development seeks a change of use of each agricultural building by conversion to a dwelling, with associated building operations.
9. Planning Practice Guidance (PPG) sets out that the Class Q right assumes that the agricultural building is capable of functioning as a dwelling³. 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 building operations in paragraph Q1(i)(i)(aa) and (ii). This part of the PPG further sets out 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. 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.

¹ Within the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended

² The limitations at paragraph Q1(i)(i)(bb) are not in dispute between the main parties

³ Paragraph: 105 Reference ID: 13-105-20180615

10. Barn 1 and Barn 2 have similar precast concrete portal frames and roof purlins, with each column set into the ground by an individual pad foundation. These structural, load-bearing parts of the buildings are formed of good quality materials and are in good condition. Both pitched roofs are single skin asbestos cement sheets with some polycarbonate skylights. Apart from two openings, the sides of Barn 1 are otherwise clad with a single skin of asbestos cement sheets, profile metal panels or timber boarding fixed in place by vertical concrete or timber posts and horizontal metal side rails. Most of the floor is compacted chalk with topsoil or stones and a separate raised concrete apron at either end with a blockwork enclosure in one corner. Aside from high level gables using single skin asbestos cement sheets, Barn 2 is open on all sides with no internal partitions and a compacted chalk or topsoil floor.
11. Notwithstanding the greater visual and physical presence of Barn 1 compared to Barn 2, use of the barns in their present state would not provide satisfactory living conditions. Moreover, neither existing building possess any inherent or pre-existing features which are sufficiently strongly reminiscent or suggestive of a dwelling. In my view, neither building is capable of functioning as a dwelling without the proposed external and internal building operations.
12. In Appeal A, the portal frame and roof purlins of Barn 1 would be retained without significant alteration, as well as the existing side rails. The roof would be replaced by metal panels with no skylights and the sides would be replaced by external walls using metal or timber cladding including windows and doors and some new side rails. In Appeal B, one end of the portal frame and some roof purlins would be removed though the parts to be retained would otherwise not be significantly altered. A replacement roof and new (not replacement) walls, including windows and doors, would use the same materials as in Appeal A and require new side rails. Both dwellings would be divided internally by partitions on top of a new floor, which would also support the internal skin of the external cladding. Each dwelling would have a small residential curtilage.
13. These works would, therefore, include the installation of windows and doors, the replacement of roofs and the replacement or installation of exterior walls reasonably necessary (ie not superfluous) for each building to function as a dwelling. This is, though, not determinative. Having regard to relevant caselaw⁴ that I have been referred to, it is also necessary to consider the extent of the proposed building operations and their substance in the planning context.
14. In Appeal A, the replacement external roof and wall materials would be similar in weight to the equivalent parts of Barn 1 to be removed. According to the appellant's structural condition report and addendum⁵ there would be no need to strengthen the structural, load-bearing properties of the portal frame or roof purlins to support these parts of the dwelling. In Appeal B, the dismantling works would not adversely affect the structural or load-bearing integrity of the residual part of Barn 2. It would be strong enough to support the replacement roof and the external cladding of all four new walls of the dwelling. Albeit that the appellant's figures and calculations are based on some assumptions, the structural report is prepared by a suitably qualified professional. The Council has provided no figures or calculations to the contrary. I have, therefore, no reason to doubt the appellant's evidence in these regards.

⁴ *Hibbitt v SSCLG* [2016] EWHC 2853

⁵ A structural condition report and addendum has been prepared for each proposed development. For convenience hereinafter referred to in each appeal respectively and singularly as 'the structural report'

15. In Appeal A, no other fabric from Barn 1 would be retained or incorporated into the dwelling and the rest of this building would be obliterated. In Appeal B, despite its overall size, Barn 2 is innately skeletal and minimalist in form. Consequently, to establish both dwellings would require an entire above ground building envelope formed by new roofs and walls including, in Appeal B, where no walls currently exist. While these external parts of the proposed buildings would not require any additional structural or load-bearing building operations, these works alone would nevertheless not be sufficient to establish a dwelling.
16. The PPG⁶ also indicates that for a building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow a floor or internal walls. The PPG sets out that such internal works are not generally development and are not prohibited by Class Q. There are no proposed construction details or drawings, or any schedule of works, before me.
17. In both dwellings even if the internal partition walls were not load-bearing, the structural report states that the internal skin of the external cladding could be made of structural infill panels (SIPs). These would span vertically, so that no additional weight would be transferred to the portal frames, and would be installed with additional side rails in Appeal A or new side rails in Appeal B. Furthermore, the extensive horizontal or vertical glazed window and door panels in each dwelling would have appreciable weight. The structural report does not say that this fabric would be mainly or wholly supported by the portal frames or, indeed, how windows and doors would be supported at all.
18. The new floors would provide a base for internal partitions and finished floor surfaces. It has not been suggested that the floors would be necessary to underpin or otherwise consolidate the individual portal frame pad foundations or to provide a strip foundation integral to any single replacement or new wall. Albeit that it would affect only the interior or not materially affect the external appearance of the proposed buildings, the excavation and installation of new foundations in the form of a ground bearing slab floor across the entire floorplan of the proposed dwellings to support SIPs or glazed panels would, in my view, go beyond works of 'maintenance, improvement or other alteration' and not be exempted from the meaning of 'development' under s55(2)(a)⁷.
19. Moreover, taken in the context of the applications before me, these internal works relate to the core fabric of each proposed building and are plainly an essential composite part of the totality of the proposed development. The dwellings could not be established without these internal works which would be building operations other than those specified in paragraph Q1(i)(i)(aa).
20. In Appeal B, a significant proportion of the barn (a whole bay, or a third of the size of this building) would be partially demolished. Rebuilding is not limited to development that occurs only following total demolition. Removing this otherwise structurally sound fabric would result in a new external elevation built within the confines of the existing barn and the proposed dwelling would be substantially smaller than the existing building. Fundamentally, the proposal would no longer be seeking to change the use and convert the existing building but in scale and form be a distinctly different new building. Furthermore, while the position of the new external wall would be conveniently aligned with part of the portal frame to be retained, dismantling the existing building in this way

⁶ Paragraph: 105 Reference ID: 13-105-20180615

⁷ Town and Country Planning Act 1990, as amended

would nevertheless not be reasonably necessary for it to function as a dwelling. The underlying reason for these works would be to ensure that the combined floorspace of both dwellings would not breach a 465m² limitation of Class Q. Accordingly, I consider that this partial demolition would not be within the provisions of paragraph Q(i)(ii).

21. In my view, in the planning context, the proposed building operations required to construct and establish the proposed dwellings would be significant in nature and magnitude. In all practical reality, these works would be such that overall the proposed development would largely be starting afresh with only a modest amount of help from the structure and fabric of the original agricultural buildings. Consequently, the extent and substance of the proposed external and internal building operations in both appeals required to create the proposed dwellings from the barns on the site would go a long way beyond what is reasonably necessary or understood for a traditional conversion of buildings to residential use. The proposed development would be tantamount to a rebuild and the existing buildings are not, therefore, already suitable for change of use by conversion to residential use.
22. Taking all of the above into account, I find that the proposed development in both appeals would not be permitted development under Class Q(b), including because relevant limitations in paragraph Q1(i)(i)(aa) and (ii) would not be met.

Prior approval

23. The conditions set out in paragraph Q2(1)(a) to (g) relate to certain details of the proposed development — transport and highways, noise, contamination, flooding, location or siting, design or external appearance and the provision of adequate natural light in all habitable rooms of the dwellinghouses. However, given my finding in relation to the first main issue above, I do not need to consider these prior approval matters because to do so would not alter the outcome of the appeals.

Other Matters

24. Since 6 April 2021, Article 3(9A) of the GPDO includes that Schedule 2 does not permit any new dwellinghouse where the gross internal floorspace does not comply with the Government's nationally described space standard issued on 27 March 2015. Neither main party has addressed Article 3(9A). Nevertheless, given my finding in relation to the first main issue above, I do not need to consider this matter because it would not alter the outcome of the appeals.

Conclusion

25. For the reasons given above I therefore conclude that both appeals do not succeed.

Robin Buchanan

INSPECTOR