



Appeal Decision

Site visit made on 27 September 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/J1860/W/22/3300751

Bentley Farm, Holt Heath WR6 6TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), 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 Brookes against the decision of Malvern Hills District Council.
 - The application Ref 21/02250/GPDO, dated 7 December 2021, was refused by notice dated 4 February 2022.
 - The development proposed is change of use of an agricultural building to a dwellinghouse.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO') for the change of use of an agricultural building to a dwellinghouse at Bentley Farm, Holt Heath WR6 6TX in accordance with the terms of the application Ref 21/02250/GPDO, dated 7 December 2021, and the details and plans submitted with it, including plans SJD-287-010 (site location), SJD-287-006 (existing and proposed plans/elevations), SJD-287-007 (proposed illustrative perspective views) and SJD-287-009 (proposed sections). The approval is subject to the condition set out in Paragraph Q.2(3) of Schedule 2, Part 3, Class Q of the GPDO, that the development must be completed within a period of 3 years starting with the date of this decision.

Applications for costs

2. An application for costs was made by Mr James Brookes against Malvern Hills District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant's surname has been spelt differently throughout by both parties. Following clarification the appellant's surname is Brookes.

Procedural Matters

4. It is clear from the submitted evidence that the proposal falls to be determined under Class Q(b) of Schedule 2, Part 3 of the GPDO. This permits a 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, together with building operations reasonably necessary to convert the building to a dwellinghouse.

5. A determination first needs to be made as to whether the proposal constitutes permitted development in accordance with Paragraph Q.1.(a) to (m). The Council contends the development is not permitted development under Paragraph Q.1.(i) parts (i) and (ii) on the basis the proposed building operations would exceed what is considered to be reasonably necessary for a conversion.
6. In the event development is permitted, Paragraph Q.2 sets out a number of conditions. Condition Q.2.(1) requires that the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to a number of prior approval matters set out in sub-sections (a) to (g). There is no dispute between the parties that the proposal meets prior approval matters relating to (a) transport and highways impacts, (b) noise, (c) contamination risks, (d) flooding risks, (e) whether the location is impractical or undesirable, or (g) adequate natural light. However, the Council refused to grant prior approval for the design or external appearance of the building under Paragraph Q.2.(1)(f).
7. For prior approval applications under Part 3, Paragraph W(10) requires that account must be taken of any representations received and regard must be had to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval.

Main Issues

8. The main issues in this appeal are:
 - Whether the proposal would be permitted development for the purposes of the GPDO having regard to whether the building operations would be reasonably necessary to convert the agricultural building into a dwellinghouse, to comply with Paragraph Q.1(i)(i) and (ii) of the GPDO, and
 - If found to be permitted development, whether prior approval is required with regard to the design or external appearance of the building so as to comply with Paragraph Q.2.(1)(f) of the GPDO.

Reasons

Whether building operations are reasonably necessary

9. Some building operations are allowed as part of a Class Q(b) conversion, but Paragraphs Q.1.(i) and (ii) place restrictions on what can be undertaken. Permitted works can consist of the installation or replacement of (aa) windows, doors, roofs, exterior walls, and (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and (ii) partial demolition to the extent reasonably necessary to carry out these building operations.
10. A prior approval application is not subject to the same rigours as a planning application. The national Planning Practice Guidance (the PPG) describes the prior approval process as a 'light touch'. The PPG provides further clarification¹ about the scope of permitted building operations. The permitted right assumes that the agricultural building is capable of functioning as a dwelling and hence permits building operations which are reasonably necessary to convert the

¹ PPG Paragraph: 105 Reference ID: 13-105-20180615

building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. It goes on to state that it is not the intention of the GPDO 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.

11. Of further assistance is the *Hibbitt*² High Court Judgement which addresses the extent of building operations allowed for a Class Q(b) application and whether they would amount to conversion or a re-build (fresh build), which are conceptually different. *Hibbitt* was considering an open-sided building, which is not comparable to the appeal building before me. However, *Hibbitt* concluded that the building must be capable of conversion without complete or substantial re-building or, in effect, the creation of a new building. *Hibbitt* found that the extent of the works themselves is not dispositive, but it is for the decision-maker to assess the extent of the works and decide whether they fall within, or go beyond, the statutory limits with regards a conversion or a rebuild. Paragraph 105 of the PPG has been revised since *Hibbitt* and no longer includes the requirement that the existing building be structurally strong enough to take the loading which comes from the external works to provide for residential use.
12. The appeal building is a modern 5-bay, single-span, steel portal-framed agricultural building with a dual pitched roof. Externally the building is clad on all sides, from eaves to ground, in dark green profiled metal cladding. Apart from a roller shutter door and personal door on two elevations (side and front) there are no other openings. The roof is of corrugated fibre cement supported on zed-section galvanised steel purlins, with four rooflights. Inside the building there is a solid concrete floor throughout. There are pre-cast concrete panels up to a height of about 2.2m metres, but the corrugated sheeting covers them externally. Internally the building has been divided with a full height wall into a 2-bay and 3-bay section.
13. A Structural Inspection Report (the 'SIR') was submitted with the application, and an updated commentary submitted with the appeal. Although based primarily on a visual inspection, the report found the steel frame appeared unaltered from its original arrangements and was in good condition. Where measured the frame was plumb and the floor slab appeared generally to be in good condition. The reports conclude by saying that there was no structural reason why the building could not be refurbished for residential use. From my observations on site, which included going inside the building, I saw it was enclosed and intact on all sides, weathertight and appeared to be in good condition inside and out.
14. The proposed external alterations to create a 5-bedroom dwelling would involve replacing the 2 roller shutter openings and personal doors with full height glazing. In addition, new full height glazed openings would be created in the other end elevation (facing the approach drive), as well as in the side elevation with the existing roller shutter. On the side elevation facing the boundary hedge a small window and personal door would also be inserted. The existing walls and roof cladding would remain, as would the concrete floor and the structural frame.

² *Hibbitt v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

15. According to the SIR, the proposed installation of doors and windows could be achieved without affecting the overall structural arrangement or building stability, based on the presumption that the main structural frame and design principles of a typical portal frame building remain unaltered. Openings in the cladding would require trimming steelwork supported back to the main structure. Openings in the pre-cast concrete could be achieved by cutting out sections of concrete and installing secondary trimming steelwork to provide support to the end of the panels, similar to that which exists at the moment to the doors, or the concrete panels could be removed. The report concluded that structurally the building can be used for a residential conversion without alteration to the main structural elements and straightforward amendments to the secondary structure for doors and windows.
16. The parties agree that the works to convert the building are 'common building operations/works' and do not amount to new structural elements to the frame. It is unlikely that many existing agricultural buildings are suitable for habitation as they stand without the introduction of insulation, dividing walls and heating to meet regulatory standards to make them suitable for human habitation. The PPG recognises that for an agricultural building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q. The proposed plans show that internal wall divides would be installed to make individual rooms and a mezzanine floor would be installed to provide space for two further bedrooms at first floor.
17. The proposed works would not involve removing the external cladding or roof and exposing the metal structure, which was the case in *Hibbitt*. Here the appeal building has all 4 sides and roof intact, and the roof and wall cladding materials would remain, as also stated on the 'finishes schedule' on submitted elevation plan SJD-287-006. Glazing would be installed in existing openings and limited new openings. The GPDO permits the installation of doors and windows and makes no distinction between structural and non-structural works. I find there is nothing to suggest that the installation of a cassette-style glazing system would constitute building operations not permitted, particularly given the extent of the original fabric and external cladding that would be retained. I am satisfied that the existing building is capable of conversion and that the proposed building operations do not amount to a re-build, but are works that are reasonably necessary for the building to function as a dwelling.
18. In its decision notice the Council has referred to the proposal not complying with part (ii) that permits partial demolition, to the extent reasonably necessary to carry out these building operations. However, there are no demolition works proposed and hence I find there is no conflict with this part.
19. Both parties have submitted a number of appeal decisions to support their case. The Council has also included some cases determined in other parts of the country to demonstrate the approach other authorities have taken. However, I have only been presented with the appeal decisions themselves, which provides only limited details of the subject buildings and extent of the works. The appellant has provided plans and some structural surveys for a number of Worcestershire examples.

20. Most of the examples from both parties describe the existing buildings as having a number of open sides, or needing structural strengthening work or new internal structural frame, substantially or wholly new walls, or even new foundations. These differ in various ways from the appeal proposal before me, which has all 4 walls and roof intact and which would principally remain, such that the examples are not directly comparable to the appeal scheme before me. Whilst consistency in decision-making is important, all decisions turn on their own particular circumstances based on the facts before each decision-maker at the time. In any event I must consider the appeal proposal on its own merits based on the facts and evidence before me.
21. To conclude on this main issue, the building is already suitable for conversion to residential use and the proposed building operations would be reasonably necessary to convert the building for it to function as a dwellinghouse and would comply with the provisions of Q.1.(i)(i) and (ii) of the GPDO.

Design and external appearance of the building

22. The building is located down a track off the Holt Heath to Worcester Road. The site is surrounded by fields and clearly in the countryside, but views of it are limited in the wider countryside setting due to its siting as part of a courtyard of other modern agricultural buildings. The existing building is of an unremarkable, functional and utilitarian design, whose appearance is not uncommon on farms and in the countryside today.
23. The Framework encourages high quality design and seeks to encourage design that will add to the overall quality of the area. The proposed works to convert the building into a single dwelling would introduce some changes to the external appearance of the building. This is inevitable and is reflected by the scope of building operations that are permitted by the GPDO and by the explanatory text in the PPG. Class Q makes no distinction between old or modern agricultural buildings and applies of all types, styles and designs.
24. The proposals would not change the form or shape of the building. The changes are simple in design and concept. The proposal would introduce areas of glazing. However, the size and shape of existing openings are utilised for the glazing, and new openings would replicate them in size and design. This helps create a cohesion of design throughout the building. The building operations would not introduce any ornamentation or overt domestication of the building. Furthermore the majority of the external roof and wall cladding would be retained, such that the building would retain its largely utilitarian agricultural appearance and hence would not appear unduly incongruous or out of keeping with its rural and agricultural setting. There is nothing to suggest to me that the works would not be of a high quality.
25. I am satisfied that both the design and external appearance of the proposal would be acceptable and would comply with Paragraph Q.2.(1)(f) of the GPDO.

Conclusion

26. For the reasons above the proposal is permitted development under Schedule 2, Part 3, Class Q(b) of the GPDO. The appeal is allowed and prior approval is granted.

K. Stephens INSPECTOR