



Appeal Decision

Site visit made on 25 October 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th November 2022.

Appeal Ref: APP/J1860/W/22/3301481

Land At (OS 6329 6419), Kyre, Tenbury Wells WR15 8RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr T Powell against the decision of Malvern Hills District Council.
 - The application Ref 21/02099/GPDQ, dated 12 November 2021, was refused by notice dated 27 January 2022.
 - The development proposed is described as change of use of an agricultural building to two dwellinghouses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal relates to an application under Schedule 2, Part 3, Class Q(b) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) seeking a change of use of an agricultural building to two dwellinghouses.
3. The main issues are therefore:
 - Whether the proposal would be permitted development under the Order, having particular regard to whether the building operations would be reasonably necessary to convert the building; and
 - If the proposal would be permitted development, whether it would be acceptable in terms of design and external appearance and whether it would provide adequate natural light in all habitable rooms.

Reasons

Whether the proposal would be permitted development

4. Class Q(b) of the GPDO 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), together with building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses). The Planning Practice Guidance¹ (PPG) sets out that under Class Q the permitted development right 'assumes that the agricultural building is capable of functioning as a dwelling' and 'it is not the intention of the permitted development right to allow rebuilding works which would go beyond what is reasonably necessary for the conversion of the building to residential

¹ Paragraph 105 Reference ID: 13-105-20180615

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’.

5. The PPG is supported by relevant case law² to which I have had regard. The caselaw established that Class Q(b) only permits building operations necessary to convert the building, and therefore if a development does not amount to a conversion it cannot benefit from Class Q(b). Furthermore, the case law confirmed that whether a proposal constitutes a conversion or a rebuild is a matter of planning judgement and the nature and extent of the proposed building operations are a relevant consideration in making that assessment.
6. The agricultural building subject to this appeal is single-storey with a high central bay and two lower side wings. The roof is corrugated fibre-cement sheeting. The elevations consist of low concrete and block walls, to a height of around 1.2 meters, with corrugated metal sheeting above. There are also low concrete walls which sub-divide the inside of the building. Large full height doors cover much of the frontage. The building is supported by a simple internal steel frame, some of which is sited onto the low walls and some directly onto the concrete slab floor.
7. The proposal states that the majority of the existing exterior materials would be retained. Two wide and high sections of glazed doors and windows are proposed to be inserted in each of the front and rear elevations, along with an additional 11 windows. Within the building, two new walls would be constructed, each forming an entirely new side elevation which would separate the dwelling in each wing from a covered central area formed by the existing high bay.
8. I have had regard to the structural survey and other assessments³ submitted with the appeal, alongside the plans and my own observations made during a site visit.
9. The metal sheeting is generally in serviceable order and would seem to be sufficient to provide basic weather proofing for the proposed dwellings. Despite this, the appellant estimates that around 26% of the total enclosure would be new sheeting and it was evident during my site visit that some existing sections would need to be replaced and gaps filled. It is unclear from the submitted plans and evidence how the existing large door openings to the front would be dealt with. The wide glazed sections which are proposed for the front are of different dimensions to the existing large doors. Given this fact, significant sections of the metal sheeting, comprising of the existing doors themselves as well as the area above, may well require replacement, prior to installation of the new windows and doors. The evidence does not show if this has been accounted for in the estimates of new and replacement sheeting.
10. The windows and doors would, in most cases, appear to sit on the existing low walls or the floor and the wide sections of glazing would be side hung off the steel frame. While the appellant states that insertion of new fenestration does not present any concerns given the composition and condition of the metal sheeting, no substantive evidence is provided to support this. On the basis of

² Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

³ Structural Survey by John Duddell Associates, ref JD/J18179 (October 2021); Construction Method Statement by N J Teale (undated); GEOMEX Ltd Assessment (April 2022)

my own observations and given that the building structure is largely provided by the steel frame rather than the exterior materials, significant works would seem to be required to enable the proposed openings to be inserted into the metal sheeting and securely sealed.

11. The two new side elevation walls within the building would be constructed with a timber framework sitting on the low sub-dividing walls and clad in new metal sheeting fixed to the existing steel frame. While these walls would be 'inside' the existing building they would form one of the main 'outside' walls separating each dwelling from a covered central area rather than from another dwelling. As such, I do not consider it appropriate to consider these new side elevation walls in the same way as the internal walls which create rooms within individual dwellings. The work required to create these new walls would be substantial.
12. The structural survey states that additions to or strengthening of the existing steel frame would not be required, despite evidence of some rusting in several columns close to the ground. It also states that the existing concrete floor would be capable of withstanding loads significantly in excess of those resulting from residential use and no work would be required to the foundations. However, I have not been provided with any structural calculations to show the additional loading that the required works would place on the steel framework, low walls, floor and foundations, or the ability of the existing structures to withstand any additional loading. The structural survey does not include any trial pits and from the wording of the report it seems that an independent on site investigation of the floor and foundations has not been undertaken. The report also notes that despite the lack of vertical bracing, stability is achieved by the concrete walls and stanchions. Again, this statement is not supported by substantive evidence or structural calculations and I note the limited number of steel uprights and spans and the wide spaces between them.
13. The low walls are proposed to support the windows as well as timber frames and insulation for the new side elevation walls. It also appears that some of the uprights of the main steel frame are supported directly onto these walls, rather than the floor. Consequently, the low walls would be a vital element of the structural support for the proposals. Despite this, the condition and load bearing capacity of these walls is not considered in the structural survey.
14. Taking the above factors into account, in the absence of substantive evidence to the contrary, which it would be for the appellant to provide, I cannot conclude that the existing structure is suitable to accommodate the proposed works. I therefore cannot rule out that significant additional building operations would be necessary to ensure the existing steel frame, floor, foundations and low walls would be structurally able to support the proposed windows, doors, ceiling joists, ceiling, insulation, timber framework and new cladding.
15. Plans show the insertion of ceiling joists to support a ceiling. Further works would provide insulation to the walls, as well as providing internal dividing walls. Internal works are not generally development and the PPG states that for the building to function as a dwelling it may be appropriate to undertake internal works, including to allow for the insertion of internal walls, which are not prohibited by Class Q. However, the scale and nature of the works which would be required to facilitate such proposed internal works all add to the overall extent of the building operations.

16. Given that the central issue requires the exercise of planning judgment, it is perhaps not that surprising that appeal decisions involving other agricultural buildings illustrate judgements both for and against specific proposals. Both parties have highlighted various appeal decisions⁴ involving some consideration of the extent of works proposed under Class Q of the Order. These examples all related to different buildings and therefore, necessitated a different individual judgement to be made in each case. In broad terms, my general approach accords with the relevant factors identified by those Inspectors. However, given the differences in building type, construction and available structural information they are individually of limited weight when exercising the judgement in this case. I have considered the proposal on its own merits and the evidence before me.
17. I conclude that the scale, extent and nature of building works required to enable the existing building to be converted has not been clearly and adequately specified. As a consequence, it has not been demonstrated that the existing building is capable of functioning as dwellings or that it is already suitable for conversion. Therefore, regardless of the retention of the majority of the metal sheeting, I do not have the evidence which would lead me to conclude that the building operations would not exceed what is reasonably necessary to convert the agricultural building to use as two dwellings. Based on the evidence before me, my own observations, and having regard to case law and the guidance within the PPG, in my planning judgement the proposal would not benefit from the permitted development rights set out under Schedule 2, Part 3, Class Q(b) of the Order.

External appearance and natural light

18. I have concluded that the proposal would not be permitted development under Class Q of the GPDO. Therefore, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO. Consequently, there is no need for me to consider prior approval matters such as external appearance and natural light, as it would not alter the outcome of the appeal.

Conclusion

For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore dismissed.

Helen Davies

INSPECTOR

⁴ APP/J1860/W/20/3265391; APP/J1860/W/21/3275424; APP/J1860/W/21/3286139; APP/J1860/W/20/3256392; APP/J1860/W/21/3278675; APP/H1705/W/21/3275273; APP/R3325/W/22/3293456; APP/J1860/W/22/3294223; APP/R0660/W/22/3296556; APP/J1860/W/20/3263591.