



Appeal Decision

Site visit made on 5 December 2022

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 February 2023

Appeal Ref: APP/L3815/W/21/3288037

11 Cow Lane, Sidlesham, Chichester PO20 7LN

- 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) and Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr K Kensett against the decision of Chichester District Council.
 - The application Ref SI/21/01963/PA3Q, dated 22 June 2021, was refused by notice dated 17 August 2021.
 - The development proposed is "Change of Use of an existing agricultural building - former piggery building - to 1no dwellinghouse (Use Class C3)".
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for Change of Use of an existing agricultural building - former battery building - to 1no dwellinghouse (Use Class C3) at 11 Cow Lane, Sidlesham, Chichester PO20 7LN in accordance with the terms of the application, Ref SI/21/01963/PA3Q, dated 22 June 2021, and the details submitted with it.

Application for costs

2. An application for costs was made by Mr K Kensett against Chichester District Council. This application is the subject of a separate Decision.

Preliminary matters and main issues

3. The description of the development proposed in the banner heading has been taken from the application. The appellant has explained that 'piggery' should be 'battery', so I have amended the description in the Decision. During the appeal process, the appellant submitted revised plan numbered 4A, which shows a single bed instead of the double bed shown on application plan 4. The appellant has confirmed that a one person one bedroom dwelling is proposed. As the amendment to the indicative furniture layout has been submitted for the avoidance of doubt, and as I do not consider that anyone's interests would be prejudiced, I shall consider the revised plan.
4. The Council is content that the proposal would satisfy all matters other than those relating to whether the appeal building is capable of and suitable for conversion to a dwelling, space standards, and its effect on the Chichester and Langstone Harbours Special Protection Area (SPA) and the Pagham Harbour SPA. I see no reason to disagree.

5. The main issues are:

- whether the proposed development falls within the scope of the permitted development right in GPDO Schedule 2, Part 3, Class Q, and
- the effect that the proposal would have on the integrity of the Chichester and Langstone Harbour and Pagham Harbour SPAs.

Reasons

Permitted development

6. The permitted development right in GPDO Schedule 2, Part 3, Class Q(b) permits a change of use of a building and any land within its curtilage from 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 use falling within Class C3 (dwellinghouses), subject to the limitations and conditions set out in paragraphs Q.1 and Q.2 of that Class.
7. Planning Practice Guidance (PPG) advises that the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations (works) 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.
8. The pitched roofed 3 bay timber framed battery building includes a concrete raft foundation and a profiled composite sheet roof on timber purlins and 2 well triangulated trusses. All 4 sides of the building are enclosed. There are windows in the roughly east, north (high level) and west walls, and timber doors in the north and south walls, which are otherwise mostly clad in board.
9. The appellant's structural engineer's report states that the building performance over its long lifespan has been adequate, and the structure is generally to good line and level. It concludes that the structural fabric of this building is adequate without alteration and is capable of functioning as the proposed dwelling. Structurally, the proposed conversion is entirely reasonable and feasible, and other aspects of the building regulations can be satisfied without any need for a rebuild. The engineer would not be expected to comment on the 'stature' of the existing roof sheeting if it was not considered to be a structural element.
10. The building is thought to date from around the 1940s. The hardboard cladding looks shabby, but it is a relatively small part of the building, and it has already been replaced with plywood or similar in the east wall. Most of the simple hopper type windows and the sliding doors in the south gable end are or appear to be useable. Despite the age and condition of its hardboard cladding,

the building as a whole is reasonably sound and robust. It also appears to be reasonably wind and weathertight, with little sign of damage or decay inside.

11. The existing raft foundation, timber frame and roof sheeting, which looks to be in good condition and undamaged, would be retained. The existing external cladding would be replaced with timber weatherboarding in line with the building's original finish (similar to the existing weatherboarding in the south gable end). The proposed windows would replace most of those existing in about the same places. There would be a door and French windows in the east and west walls respectively. The south door and few existing window openings that would not be required would be infilled with timber framing, which the engineer has confirmed would not affect the adequacy of the structure.
12. The works, including weatherboarding, doors and windows, damp proofing, thermal insulation and durable finishes to the walls, floor and roof, and services, would be reasonably necessary for the building to function as a dwelling, so they would fall within the scope of Q.1(i). Without the existing building, the works would not have the stature to be a self-supporting edifice. Moreover, in considering the existing building as a whole, the works would not be so extensive, or so substantial, that they would amount to a fresh or new build. So, the existing building is suitable for conversion to residential use, and it is capable of functioning as a dwelling.
13. The plan and section in the appellant's representations show that the floor to ceiling height would be at least 2.3 m for roughly 78% of the gross internal area of the proposed one person one bedroom dwelling. The gross internal area of the dwelling and minimum requirements for a single bedroom in the nationally described space standard issued by the Department of Communities and Local Government (NDS) would be exceeded, so the proposal would satisfy GPDO articles 3.(9A) and 3.(9B).
14. Therefore, I consider that the proposed development would fall within the scope of the permitted development right in GPDO Schedule 2, Part 3, Class Q.

SPAs

15. The site falls within the 5.6 km zone of influence of the Chichester and Langstone Harbours SPA and within the 3.5 km zone of influence of the Pagham Harbour SPA. In determining this appeal, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
16. The proposed development would increase the number of people living near the SPAs. So, this proposal, in combination with other plans and projects, would be likely to have a significant effect on the SPAs due to increased recreational disturbance. Because the proposal is not directly connected with or necessary for the management of the SPAs, it is necessary for me to undertake an appropriate assessment of the implications of the proposal for the SPAs in view of their conservation objectives. I can only grant approval if I ascertain in that appropriate assessment that the integrity of the SPAs would not be adversely affected.
17. To address recreational disturbance, the Council has adopted a mitigation approach that includes the Bird Aware Solent Strategy and the Chichester and Arun Joint Scheme of Mitigation (Bird Aware Pagham), which has been found

acceptable by Natural England. The appellant has submitted a completed planning obligation to secure a financial contribution towards the provision of access mitigation measures in respect of the SPAs.

18. Because the obligation would be necessary to reduce recreational pressure on the SPAs in accordance with the Bird Aware Solent Strategy and the Chichester and Arun Joint Scheme of Mitigation (Bird Aware Pagham), it would be necessary to make the proposal acceptable in planning terms. As the financial contribution has been calculated on the basis of the one person one bedroom dwelling proposed, it would be directly related to the development, and as it has been calculated in accordance with the Council's published tariff, it is fairly and reasonably related to the development. As the completed obligation satisfies all 3 tests in The Community Infrastructure Levy Regulations 2010 (as amended), I shall take it into account.
19. Pursuant to Regulation 63(3) of the Habitats Regulations, I have consulted the relevant nature conservation body, Natural England, and it is content that the contribution is sufficient to avoid an adverse impact on the integrity of the SPAs and their relevant features. The planning obligation would provide the necessary mitigation. Thus, I am able to make as an appropriate assessment so as to be satisfied to the appropriate level of certainty that the proposal with mitigations secured will not adversely affect the integrity of the SPAs.
20. Therefore, I consider that the proposal would not be likely to have a significant adverse effect on the integrity of the SPAs. It would satisfy the Habitats Regulations, and so the proposed development would benefit from planning permission granted by Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO.

Conditions

21. Prior approval granted for development under GPDO Article 3(1) and Schedule 2, Part 3, Class Q is subject to the condition under Q.2(3) which states that development must be completed within a period of 3 years starting with the prior approval date, so the implementation condition is not necessary. As GPDO W(12)(a) states that the development must be carried out in accordance with the details approved, and as furnished layouts are not required to demonstrate compliance with the NDS, the condition identifying the approved plans is also not necessary. The curtilage would be no larger than the land area occupied by the existing building, and its general layout is shown in the details approved. So, as no reasons have been given for the suggested condition to control boundary treatment, it is not reasonable or necessary.

Conclusion

22. For the reasons given, the appeal should be allowed.

J Reid

INSPECTOR