



Appeal Decision

Site visit made on 22 December 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Appeal Ref: APP/D2510/W/22/3300279

Large Agricultural Barn to the West of Old Woodhall Road

Easting 520874, Northing 366852

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the "GDPO").
 - The appeal is made by Mr R Read against East Lindsey District Council.
 - The application Ref: S/170/02237/21, is dated 7 October 2021.
 - The development proposed is for the conversion of one section of an existing agricultural barn into 2No. small dwelling houses and demolition of the other part of the barn.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 for the conversion of one section of an existing agricultural barn into 2No. small dwelling houses and demolition of the other part of the barn at Large Agricultural Barn to the West of Old Woodhall Road, Easting 520874, Northing 366852, in accordance with the terms of application Ref: S/170/02237/21, dated 7 October 2021, and the plans submitted with it.

Applications for costs

2. An application for costs was made by Mr R Read against the East Lindsey District Council. This application will be the subject of a separate decision.

Preliminary Matters

3. In the interests of conciseness and clarity I have amended the description of development from that provided within the application form.
4. Additional supporting evidence was provided by the appellant at a late stage as part of the final comments. This included a Phase 1 Desk Top Study Report, Flood Risk Assessment, Structural Engineers Inspection, Protected Species Survey and Heritage Statement. It is not clear that these documents formed part of the original application, or that interested people's views have been sought upon them. I therefore cannot be satisfied that no party would be prejudiced by my consideration of these documents in the appeal. Therefore, in the interests of fairness, I have not had regard to these documents in my consideration of this appeal.

5. Given my findings below, the Council's failure to refuse the application within the statutory period means that I cannot address any questions of lawfulness or about the prior approval matters.

Background

6. Schedule 2, Part 3, Class Q of the GDPO permits development consisting of 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 Order¹ and any building operations reasonably necessary to convert the building. It is common ground that the building is or was previously in use for agricultural purposes.
7. Development is permitted provided it accords with the requirements of Q.1. If the development is permitted under Class Q, condition Q.2(1) requires the developer to apply to the Council for a determination as to whether the prior approval of the Council will be required as to a number of matters set out in Q.2(1)(a) to (g).
8. Article 7 of the GDPO provides that where, in relation to development permitted by any Class in Schedule 2 which is subject to prior approval, and an application has been made to the local planning authority for such approval or a determination as to whether such approval is required, the decision must be made by the local planning authority within the period specified in the relevant provision of Schedule 2.
9. In this instance, the relevant statutory period for determination as to whether prior approval is required is 56 days. The effect of this is that where an application is made for a determination as to whether prior approval is required, the applicant can proceed with the permitted development if the local planning authority determines that they do not require prior approval to be given, or does not make a determination or notify the appellant of their decision within the statutory period. Prior approval is then **deemed** to be granted.
10. A fee is payable on the making of a prior approval application under Regulation 14 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits)(England) Regulations 2012. Once the fee is paid on a valid prior approval application, the statutory period for determination of the application will commence the day after.
11. The appeal is made on the basis that the Council did not notify the appellant as to whether prior approval is given or refused within the statutory period for determination, namely 56 days, following receipt of the application. In these circumstances, development within the scope of Class Q can go ahead as the GDPO grants deemed approval for such development where the Council fails to give notice of its decision within the prescribed period.
12. Therefore, the main issues are:-
 - i) whether the appeal scheme would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 with particular regard to

¹ SI 1987/764 The Town and Country Planning (Use Classes) Order 1987 (as amended).

whether the extent of the works proposed to the building go beyond those permitted under Class Q and, if so;

- ii) whether a determination was made by the local planning authority within the 56-day statutory period and, if so;
- iii) whether Prior Approval should be given having regard to the conditions of Q.2 in respect of whether it would be impractical or undesirable to change from an agricultural use to a use falling within Class C3 (dwellinghouses).

Reasons

Extent of works proposed

13. Paragraph Q(1)(i) places restrictions on the building operations which can be undertaken and in particular, 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.
14. Paragraph 105 of the Planning Practice Guidance² provides further clarification. It 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. It follows that it is only in instances where the existing building is structurally strong enough to take the loading which comes with the external works to provide for the residential use that the building would be considered to have the permitted development right.
15. Whilst no structural report was submitted with the application, the Council do not dispute that the structure, in particular, that the remaining parts of the steel frame could support the load required for the conversion. This concurred with my observations at the site visit and I see no reason to take a different view. However, the load bearing capacity of the frame alone is insufficient to meet the requirement of Part Q in this case. It is the Council's case that the works required would be extensive and the level of building operations would go beyond what could reasonably be considered a conversion such that they would be more akin to a 'rebuild'.
16. The appeal scheme would include the demolition of the open sided part of the barn and the retention of the enclosed structure at one end. The part of the building that would be retained is predominantly enclosed on all sides with three walls constructed mainly in brick with some smaller areas of metal cladding. A fourth wall comprised of sheet metal is presently an interior wall that divides the enclosed barn from the open sided structure. The existing steel frame, masonry walls and pillars would be retained, repointed and render would be applied to some parts. Whilst the roof material would be removed, it would be replaced with a similar metal material and it would utilise the existing roof frame structure. New doors and windows would be inserted into new openings. Existing openings within opposite ends of the barn would be infilled with doors and windows, with any remaining part of the opening to be

² Reference ID:13-105-20180615

permanently filled by new timber fixed barn doors. No changes to the existing flooring or strengthening works is proposed.

17. Although the Council suggest that the proposed eastern elevation of the building is currently open to the rest of the barn, this does not concur with my observations at the site visit. I noted the presence of an interior wall comprised of sheet metal that extends the full depth of this part of the barn. No new external walls are proposed and even if the steel sheeting along the proposed eastern elevation were to be removed and replaced, in my view, this replacement would amount to works permissible within the scope of Q.1(i).
18. Given the extent of the works proposed and noting that the existing building is mainly comprised of brick built sections and the proposal would not require significant sections of new wall, in my planning judgment I do not consider that the building operations would exceed what could reasonably be regarded as a conversion. I find that they amount to either installation or replacement and they would not be so extensive as to constitute the construction of a new building nor would the nature of the works imply that the building would not be capable of functioning as a dwelling.
19. Albeit a sizeable part of the structure would be demolished to make way for an area for the parking of vehicles and an access, partial demolition is not precluded by the GDPO and the extent of demolition works permitted within the Order is not defined. To my mind, taking into account the extent of the demolition together with the totality of works required, I do not consider that these would exceed what could reasonably be regarded as a conversion. Accordingly, it satisfies the concept of a 'conversion' and therefore it falls within the scope of permitted development for the purposes of Class Q.1(i).

Time for determination

20. The application was submitted on the 7 October 2021 and the appropriate fee was paid the following day, Friday 8th October 2021.
21. For the purposes of calculating the start of the 56-day statutory period, provided the application complies with the requirements of paragraph W and is accompanied by the correct fee, the 56-day statutory period will begin to run on the day after.
22. Although the GDPO makes specific provision for the exclusion of bank holidays from the time period that counts for the purposes of public notification of the application, there is no similar provision expressed within the GDPO for the statutory period for determination. As such, the incidence of weekends and public holidays together with delays in registering applications has no effect on the 56-day period.
23. The statutory period begins with "day 1" being the day immediately following the date of receipt of the application and its fee. In these circumstances, "day 1" is taken as Saturday 9 October 2021. The Council were incorrect to commence the statutory period on Monday 11 October 2021. Consequently, the Council had until midnight on day 56 to make a determination as to whether prior approval is given or refused. The notice of decision issued by the Council on the 6 December 2021 was out of time.
24. Given that notice of the Council's decision was not served within the statutory period, prior approval is deemed to have been granted and I cannot address

any issues concerning the conditions imposed on permitted development under Class Q and whether prior approval ought to be granted given matters of location and siting with respect to, among other things, the setting of a nearby listed building, highway safety and protected species. Furthermore, as prior approval is deemed to have been granted, it is not open to me to impose any additional planning condition(s).

Other Matters

25. Whilst the Council has drawn my attention to the Hibbitt case³, this involved a barn that was completely open on three sides and required the complete construction of all four walls. Consequently, I do not find it to be directly comparable to the scheme before me and I have considered the appeal on its individual planning merits.
26. I have had regard to the comments of interested parties, a number of which refer to the matters considered above. However, for reasons already explained as prior approval is deemed to have been granted, it is not open to me to consider matters which would fall to be considered as part of an assessment of the conditions under Q.2.
27. Reference has been made to the building not being used solely for agricultural use. However, there is no compelling evidence to substantiate the view that the building has been used for storage of building materials and equipment. I have had regard to the submitted photographic evidence, however, the bathroom goods appear to be stored in a different smaller building rather than within the appeal site and the piles of roof tiles are outside of the building footprint. Moreover, the photographs show the structure is either in use for the storage of hay, or insofar as it concerns the brick built portion of the barn, it appears to be empty. On the evidence before me, I am not persuaded that a change of use had occurred.
28. A number of interested parties have commented that they were unaware of the application. However, the Council have provided a site notice dated 12 November 2011 which is stated to have been displayed near to the site entrance. The procedure for giving notice of the application is set out within Class W of the GDPO. As a minimum it requires notice of the proposed development by site notice in at least one place on or near the land to which the application relates for not less than 21 days.

Conclusion

29. As notice of the Council's decision was not served within the statutory period of 56 days, prior approval is deemed to have been granted.
30. In this instance, the GPDO requires development to be carried out in accordance with the details provided in the application⁴ including the submitted plans (unless the local planning authority and the developer agree otherwise in writing) and subject to the condition that development under Class Q(a) and (b) must be completed within a period of 3 years starting with the prior approval date.

³ Hibbitt & Anr v Secretary of State for Communities and Local Government & Anr Case [2016] EWHC 2853 (Admin)

⁴ GDPO Paragraph W(12)(b)

31. For these reasons above, the appeal is allowed and prior approval is deemed to have been granted.

E Brownless

INSPECTOR