
Appeal Decision

Site visit made on 23 January 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 April 2023

Appeal Ref: APP/Y2430/W/22/3307134

Field OS 5000 and 5812, Tofts Hill, Stathern, Leicestershire LE14 4HU

- 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 (as amended).
 - The appeal is made by Mr Bell & Ms Sparks against the decision of Melton Borough Council.
 - The application Ref 22/00405/GDOCOU, dated 15 March 2022, was refused by notice dated 11 May 2022.
 - The development proposed is described as 'prior notification of proposed change of use of agricultural barn to single dwellinghouse (use class C3) and associated building operations'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) states that development consisting of Q(a) 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 of the Use Classes Order¹; and Q(b) building operations reasonably necessary to convert the building, is permitted development.

Main Issues

3. The main issues are whether the proposal is permitted development under Class Q of the GPDO, with particular regard to whether the proposed building operations would be reasonably necessary to convert the building to a dwelling; and whether the appeal building is part of an established agricultural unit.

Reasons

Building operations

4. The appeal site consists of a large agricultural building and associated land on the northern side of a narrow lane called Tofts Hill at the edge of the village of Stathern. It is proposed to convert the building to a five bedroom dwelling along with building operations to enable the conversion and the provision of a curtilage. The parts of the existing building that would not be converted, predominantly to the site frontage, would be demolished.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

5. Paragraph Q.1(i) of the GPDO states that development is not permitted by Class Q if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as Class C3 (dwellinghouses). The GPDO does not define what constitutes 'reasonably necessary' for the purpose of Class Q development. However, in this regard the main parties have directed me to the findings in the Hibbitt judgement². Here it was found that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure or the effective creation of a new building. Whether the building operations go beyond the scope of conversion is a matter of planning judgement to be considered on the individual merits of the case.
6. The Planning Practice Guidance is clear 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'.
7. The existing building is supported by a timber framework and it is clad in corrugated steel walls and roof. In order to facilitate the change of use the works proposed include a new steel portal frame, together with the replacement of the existing roof covering and wall cladding with zinc/aluminium sheeting, a new concrete ground floor and new windows and doors. Some of those works are authorised by Class Q and would be reasonably necessary for the structure to function as a dwelling. However, other elements of the scheme would constitute substantial and extensive alterations and additions. These would include the new steel frame which would be installed prior to commencement of the conversion in accordance with the Lawful Development Certificate for 'the addition of steel supports internally to help maintain the existing roof and cladding', dated 15 June 2021³.
8. The Structural Engineer's report confirms that the new frame and foundations are designed to take a traditional roof and wall structure should the barn be converted to a dwelling. It also refers to the existing timber frame as showing signs of deterioration in the way of rotting timbers. That suggests that the building is not currently suitable for conversion without those extensive structural works taking place.
9. At the time of my site visit the steel portal frame and new foundations had not been installed. The appellants contend that the steel frame or concrete floor do not have to be installed before applying for prior approval for the change of use as the effect of the Lawful Development Certificate is to certify that the barns are capable of being converted in accordance with Class Q. However, when taken together with the other works proposed, including new walls and roof, it seems to me that very little would remain of the original structure which, as it currently stands, is not already suitable for conversion to residential use. The appeal building is not capable of conversion to a residential use without

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

³ Council ref. 21/00397/CL

comprehensive rebuilding works which would be so extensive as to comprise a new building.

10. To benefit from the permitted development rights, the proposal must only involve building operations reasonably necessary to convert the building in accordance with paragraph Q.1(i). Based on the evidence before me and my own observations of the building, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q. Works of substantial rebuilding would fall outside those permitted by Class Q. I conclude that the works necessary to create a dwelling from the structure on site would not fall within the scope of that permissible under Class Q.

Established agricultural unit

11. For development to be permitted development under Class Q, paragraph Q.1(a) states that the site must have been used solely for agricultural use as part of an established agricultural unit on 20 March 2013, or the building must have been in such use when last in use, or the site must have been in such use for at least ten years if brought into use after the specified date.
12. Paragraph X of the GPDO defines an 'agricultural building' as one used for agriculture and which is so used for the purposes of a trade or business. An 'agricultural use' refers to such uses. An 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.
13. 'Agriculture' is defined in Section 336 of the Town and Country Planning Act 1990 (as amended) and includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purpose. However, 'the breeding and keeping of livestock' as an agricultural use does not include the breeding and keeping of horses, where the 'keeping of horses' involves activities other than putting them out to graze, as supported by case law⁴.
14. The evidence before me suggests that the appeal site and building have had a longstanding agricultural use which ceased in around 2016. On the basis of the evidence, including the detailed statement by Mr Jopling, it seems reasonable to conclude that the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. It appears that the site and building were vacant from November 2018 to April 2021, but agricultural use resumed after that time. The agricultural use was apparent during my site visit when I observed that the appeal building was being used to house cattle and sheep and for the storage of farm machinery.
15. The Council contends that the use of the site and appeal building for the keeping of horses between 2017 and 2018 constitutes a change of use from agriculture to an equestrian or leisure use and that this disqualifies the proposal from permitted development rights under paragraph Q.1(a). This is because the site would not then have been used solely for the purposes of agriculture for a

⁴ Belmont Farm v MHLG [1962] 13 P&CR 417

period of at least 10 years. In support of this position, the Council refers to a tenancy agreement for the site. However, the limited details of the tenancy agreement that have been provided do not include a plan identifying the land. Further, it indicates that the land was to be used for grazing by horses and ponies only and for a short period of time between April and September 2018.

16. The letter from Mrs Walker says that the land was leased in 2017 and 2018 for the grazing of horses including supplementary feeding and that as part of the lease the barn area was also used. However, the tenancy agreement appears to refer to the land only and not the appeal building. The tenancy agreement details do not demonstrate that the site was used for anything other than for the purposes of horse grazing, which in my view would not have been a change in the definable character of the use of the land. The letter does not expand on the manner in which horses were kept on the land or how often the barn was used during this period and there is evidence to the contrary, which suggests that the horses may have been stabled elsewhere. Moreover, the letter is not a sworn statement which reduces the weight that can be given to it.
17. Aerial images provided by the appellants for the relevant period, whilst only snapshots in time, do not suggest the presence of horses on the land or any equestrian paraphernalia or fencing. That would suggest that any horse related use of the site would have been low key and intermittent. If the appeal building was used for stabling, the evidence suggests it was limited to a small number of horses and for a short period only. Their housing within the building whilst not grazing would not have triggered a material change of use to equestrian or a mixed use of agriculture and equestrianism.
18. Therefore, based on what I have seen and read, I am satisfied that the appeal building has been and continues to be solely in agricultural use and is part of an established agricultural unit. Consequently, the appeal proposal would comply with the limitation set out in paragraph Q.1(a) of the GPDO.

Other Matters

19. A number of Class Q decisions have been referred to by the appellants. From what is before me I find none of the decisions to be directly comparable to the circumstances of this case which I have determined on its own merits.
20. Other concerns raised by local residents include the location of the proposal and its effect on the character and appearance of the area. As I have concluded that the proposal would not be development permitted under Class Q, there is no need for me to consider those matters relating to prior approval.

Conclusion

21. On the balance of probabilities, the evidence submitted is sufficient to demonstrate that the appeal building is in an agricultural use as part of an established agricultural unit and was on the 20 March 2013. However, I have also found that the works would amount to substantial rebuilding and would fall outside of those permitted by Class Q. Accordingly, the proposal is development for which planning permission is required. The appeal is therefore dismissed.

M Ollerenshaw

INSPECTOR