



Appeal Decision

Site visit made on 4 April 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/N1025/W/22/3311865

Little Owl Farm, Dale Road, Dale Abbey, Ilkeston DE7 4PQ

- 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.
 - The appeal is made by Michelle Selby against the decision of Erewash Borough Council.
 - The application Ref ERE/0822/0027, dated 5 August 2022, was refused by notice dated 28 September 2022.
 - The development proposed is the conversion of an agricultural building at Little Owl Farm to a two storey dwelling with associated building operations reasonably necessary for the building to function as a dwelling.
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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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO) for the conversion of an agricultural building to a two storey dwelling with associated building operations reasonably necessary for the building to function as a dwelling at Little Owl Farm, Ilkeston, DE7 4PQ in accordance with the terms of the application, ERE/0822/0027, dated 5 August 2022, and the details submitted with it, including Drawing Nos: 3784-001 Rev A Site Location Plan; 3784-002 Site Plan as Existing; 3784-003 Site as Proposed; 3784-004 Rev B Plans as Existing; 3784-005 Rev E Plans As Proposed; and 3784-006 Rev E Elevations as Proposed, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q.
2. The approval is subject to conditions set out by Paragraph Q.2(3) of Schedule 2, Part 3, Class Q of the GPDO in that development must be completed within a period of 3 years from the date of this decision as well as the provisions specified in paragraph W. The approval is also subject to the conditions set out in the attached schedule.

Preliminary Matters

3. The description of development in the banner heading above is from the planning appeal form and decision notice as it is a more succinct version than that used on the application form albeit I have had regard to this for the purposes of my assessment. I have also removed the reference to the appeal site address in the description in the decision as it is not necessary. I have used the road and postcode given on the application form rather than the appeal form in the address, as they appear to relate to a location away from the appeal site.

4. I have been made aware that the appeal building is in the Green Belt. However, planning policy on the Green Belt is not relevant to consideration under Class Q of the GPDO.

Main Issue

5. The main issue is whether the proposed development would comply with the requirements under Article 3(1), Schedule 2, Part 3, Class Q of the GPDO, with particular reference to whether the building is capable of functioning as a dwelling and whether the proposed building operations are reasonably necessary.

Reasons

6. The appeal building is a rectangular steel portal framed building. The external materials comprise metal corrugated sheet panels and it is open on the front longer side. The area in front of the barn was hard surfaced, but the floor in the appeal building appeared to be rough ground. It was in use to store a variety of farming equipment and animal feed. The site is surrounded by open agricultural fields. Access is gained from an existing unsurfaced track leading from an area with numerous other dwellings, a livery business, café, farms, and agricultural buildings which leads from the main road.
7. In order to be considered as permitted development, the proposal must fall within the scope of a 'conversion' as opposed to a 'rebuild.' In the case of *Hibbitt*¹, it was held 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, in effect, the creation of a new building.
8. The agricultural building included numerous internal substantial steel supporting columns, rafters, purlins and roof bracing. There were no significant or obvious defects to these or the single skin external wall and roof cladding which were clearly supported by and affixed to the internal frame. These were further supported by horizontal timber joists between the steel columns. Whilst the building had a simple and utilitarian appearance, it is not insubstantial. The building did not appear to be leaning.
9. The existing steel frame would be retained in its entirety. The existing wall and roof cladding would largely remain. The roof would be lined and insulated. Internal blockwork walls would be erected alongside the existing wall cladding and the cavity also insulated. A new concrete floor would need to be installed, and internal stud walls to create internal rooms and a stair case to the first floor would be created. The walls would be punctuated by windows. A new external wall would be constructed, which I return to later.
10. The appellant has stated that the internal alterations do not relate to the structural integrity of the building. For the main, the Planning Practice Guide (PPG) at paragraph 105² states for the 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. In the absence of any evidence to the contrary and based on my observations the existing structural

¹ *Hibbit and another v Secretary of State for Communities and Local Government*, Rushcliffe Borough Council [2016] EWHC 2853 (Admin).

² Reference ID: 13-105-20180615

form and the main load bearing elements of the building appeared to be structurally sound and suitable to be capable of functioning as a dwelling and supporting the alterations.

11. The Council contends that the nature of the building and particularly the lack of wall along the one side would go beyond what is necessary for a conversion. The central void is to be infilled with walling, comprising a combination of doors and glazing. These did not appear extensive to the point that they would dominate the existing structure, nor excessive in comparison to the overall amount of existing building and walls. The alterations on this elevation would also largely retain the character and appearance of the building.
12. Class Q.1(i)(i) (aa) allows for the installation or replacement of roofs and exterior walls and so, the proposed external wall and any replacement cladding would be within the scope of Class Q and would be necessary. Taking this and my own observations into account, the addition of an external wall comprising similar cladding materials and windows would be reasonably necessary to make the building weatherproof and suitable for human habitation. Consequently, these external works to the outer fabric would neither represent a fresh new build nor rebuilding of the structure.
13. Based on the evidence provided and my observations, I am satisfied therefore that the structural integrity of the building is sound and would form an integral part and thus it would be capable of functioning as a dwelling. The building operations would be reasonably necessary in this instance and would not exceed the limitations set out in paragraph Q.1(i) of the GPDO. As such, this part of the proposal would constitute permitted development as set out under Schedule 2, Part 3, Class Q of the GPDO.

Other Matters

14. The Council refused the application in relation to the suitability of the appeal building for conversion and consequently its non-compliance with paragraph Q.1. It has not, therefore, refused the proposal against paragraphs Q.2(1) and W.
15. The conditions set out in paragraph Q2(1)(a) to (g) relate to certain details of the proposed development, including transport and highways, noise, contamination, flooding, location or siting, design or external appearance, and the provision of adequate natural light in all habitable rooms. The Council raises no concerns in relation to the prior approval matters listed in paragraph Q.2(1)(a) to (g), subject to various suggested conditions in relation to contaminated land.
16. Given the above and based on the information before me and my observations on site, I have no reason to take a different view to the Council in respect of the above matters. Therefore, the proposal would, subject to the imposition of a contaminated land condition comply with these other matters considered under Class Q.
17. Whilst I have been made aware of a public right of ways I have not been provided with any definitive map. Any grant of planning permission for development, including any permission granted under Article 3 and Schedule 2 of the GPDO, does not authorise any obstruction to a public right of way. In

any event, the impact of the proposed change of use on the public right of way is outside of my remit to consider.

Conditions

18. As a result of the condition under Q.2 (3) under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO which specifies that the development shall be completed within a period of 3 years starting with the prior approval date, as well as the provisions of paragraph W, I have not imposed a plans condition as these are listed in the decision.
19. I have imposed the contaminated land condition suggested by the Council on the basis of the Environmental Health Officer (the EHO) consultation response [1]. I find the EHO reason more convincing than the appellants view that it is not necessary. The EHO has indicated that storage of farm machinery can be a contaminative activity, but in any event the full history of farming activity is not known. In those circumstances, it is reasonable and necessary for me to impose such conditions so that the proposal would safeguard future occupiers. I have also imposed a condition to safeguard the living conditions of the occupiers of neighbouring properties [2] from potential activity and noise nuisance during the construction stage.

Conclusion

20. For the reasons given, I conclude that the appeal is allowed, and prior approval is granted subject to conditions.

K Williams

INSPECTOR

Schedule of Conditions

1) No development shall commence until:

A) a scheme to identify and control any potential contaminated land risk on the site has been submitted to, and approved in writing by, the local planning authority. The scheme shall include a preliminary risk assessment (Phase I Investigation) which identifies: -

- (i) All previous uses of the site.
- (ii) Potential contaminants associated with such uses.
- (iii) A conceptual model of the site indicating sources, pathways and receptors.
- (iv) Potentially unacceptable risks associated with the contaminants on the site.

B) If indicated as necessary by the results of the Phase I investigation, the scope of an intrusive Phase II investigation must be submitted to, and approved in writing by, the local planning authority before its commencement.

C) If as indicated as necessary by the results of the Phase I and/or Phase II investigations - a written method statement detailing the remediation measures necessary to deal with any contaminated land risks found on the site shall be submitted to, and approved in writing by, the local planning authority. The method statement shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures during the remedial works. The development shall then be undertaken in accordance with the approved details.

D) Prior to the development first being brought into use a verification report shall be submitted to the local planning authority demonstrating that the works identified in the approved method statement have been carried out. The development should not be brought into use until the verification report has been submitted to and approved in writing by the local planning authority.

2) Construction works shall take place only between 08:00-18:00 (Monday to Friday) and 08:00-13:00 (Saturday) and shall not take place at any time on Sundays or on Bank or Public Holidays.

End of Schedule