



Appeal Decision

Site visit made on 5 June 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref: APP/D3505/X/22/3301666

Francis Farm, Upper Somerton, Suffolk, IP29 4BF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr R Worboys against the decision of Babergh District Council to refuse the application (Ref. DC/22/00786) dated 11/02/2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed change of use, including works, to an agricultural building under Class Q of the General Permitted Development Order (GDPO).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed use which is found to be lawful.

Procedural matters and background

2. The description of the proposed development would normally be taken from the application form. However, in this instance Section 8 (the description of proposal) says 'please see submitted statement', although I have not been provided with a copy of this. The Council's decision for the application describes the development as 'Use of a building and land from an agricultural building to Class C3 (dwellinghouse) of the Schedule to the Use Classes Order and Development to include building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses)'. I consider that this provides an accurate description and accordingly, I shall use this for the purposes of determining this appeal.
3. This appeal arises following an application under Schedule 2 Part 3 Class Q, for prior approval to the Council (DC21/06475) to determine whether, planning permission was required for the change of use of a former poultry building, to a dwelling house, together with the building operations reasonably necessary for that conversion. The deadline for the determination of that application was 24 January 2022. However, the Council concedes that the decision to refuse the application was issued on 25 January, thereby missing the 56-day deadline.
4. The submitted officer report for the prior approval application, sets out why they considered that the application would have been refused. However, under these circumstances, on the expiry of the statutory period, permission will have been deemed to be granted. Where prior approval is deemed to be, or expressly granted, the development subsequently to be undertaken will be

lawful, if it is both carried out in accordance with the submitted plans and it is, in fact, permitted development.

5. The application subject to this appeal, seeks to establish whether the development as proposed is lawful under The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). The development was for a proposed change of use, including works, to an agricultural building under Class Q of the GDPO. Class Q grants planning permission for (a) a change of use of a building; and (b) building operations reasonably necessary to use or 'convert' the building, subject to limitations and conditions.

Main issue

6. The main issue is whether the Council's decision to refuse to issue a LDC for the application was well-founded. In this type of appeal, the onus of proof lies with the appellant, with the relevant test on the balance of probabilities.

Reasons

7. For the avoidance of doubt, the appellant's evidence does not need to be corroborated with independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence is sufficiently precise and unambiguous. I should explain that the planning merits of the development are not relevant to this appeal.
8. Where the development proposed is proposed under Class Q(a) (the change of use) it also permits building operations reasonably required to convert the building under Class Q(b). In summary, the Council have refused the application because they consider that these works extend beyond that permitted by Class Q.
9. The provisions of the GPDO in the previous prior approval application, required the Council to assess the proposed development in respect of transport and highways impacts, flooding, contamination risks on the site and impacts of noise from commercial premises on the intended occupiers of the development. The Council has raised no timely objection on any of these grounds, with that application now deemed to have been granted.
10. However, the Council have raised concerns with regard to flooding. The site is located within Flood Zones 2 and 3a and they submit that this will have a bearing on the works required to convert the building. At the Council's request a structural survey was submitted as part of the prior approval application, and I have since been provided with a copy. It was carried out on behalf of the appellant by consulting civil/structural engineers, Adam Powers Associates. I have nothing to suggest that the survey has not been carried out by a competent person, or that the results are in any way unreliable.
11. The appellant's Structural Report confirmed my own observations on site, that the condition of the timber framed building is generally good. It is of substantial construction and capable of taking the works necessary to convert it. It has been constructed on a 200mm thick concrete plinth or slab, that has performed satisfactorily to date.

12. The report confirms that it would be acceptable to leave the existing foundations as they are, although highlights an element of risk for the appellant to consider. It suggests that traditional trench foundations should be provided to the door thresholds onto firm subsoil with footings to the same depth as the rest of the building. This would address any risk, extending only to the existing door openings, rather than the whole foundations. Accordingly, they are limited in scale, when viewed in the context of this substantial building. To my mind, it appears to be a recommendation, rather than an indication that the building, as it stands, is not suitable for conversion.
13. Planning Policy Guidance notes that under Class Q, for the building to function as a dwelling, it may be appropriate to undertake internal structural works, including a raised floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls which are not prohibited by Class Q. However, it places no distinction, or restriction on whether these works are structural, or not, provided that they are reasonably necessary.
14. I have not been provided with a copy of the Flood Risk assessment. However, the Council submit that because of the flood risk, a raised internal floor may be required. Whilst such internal works are generally permitted, they submit that a raised floor, may not be supported by the existing foundations. Nonetheless, I have no evidence before me to suggest that additional works to the foundations will be required. Moreover, the appellant has confirmed that any internal floor would be self-supporting and not reliant on the existing structure.
15. Drawing all of the above points together, the appellant has provided evidence that the building is already suitable for conversion. The suggested additional work to the foundations under the doors would be limited, even if they were found to be necessary.
16. For these reasons, I find that on the basis of the evidence before me and balance of probability, the existing building is suitable for conversion to a residential use and the identified building operations would not go beyond what are reasonably necessary to facilitate the building to function as a dwelling.

Other matters

17. The Council have referred me to a previous appeal decision APP/D2510/W/15/3005339 and have quoted a paragraph from that decision. However, I have not been provided with a copy of this appeal decision and therefore do not know the circumstances, or the context of the Inspectors comments.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use of a building and land from an agricultural building to Class C3 (dwellinghouse) of the Schedule to the Use Classes Order and Development to include building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses), was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Hilary Orr

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 February 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use of a building and land from an agricultural building to Class C3 (dwellinghouse) of the Schedule to the Use Classes Order and Development to include building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses), would be permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Signed

Hilary Orr

INSPECTOR

Date: 4th July 2023

Reference: APP/D3505/X/22/3301666

First Schedule

The change of use of a building and land from an agricultural building to Class C3 (dwellinghouse) of the Schedule to the Use Classes Order and Development to include building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses)

Second Schedule.

Land at Francis Farm, Upper Somerton, Suffolk IP29 4BF

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

This certificate applies only to the extent of the use and facilitating operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 4th July 2023

by **H A Orr MSc MRTPI**

Land at: Land at Francis Farm, Upper Somerton, Suffolk IP29 4BF

Reference: APP/D3505/X/22/3301666

Scale: NOT TO SCALE

