



Appeal Decision

Site visit made on 7 June 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 04 July 2023

Appeal Ref: APP/Y1138/W/22/3307104

Higher Edgeworthy, Nomansland, Tiverton, Devon EX16 8NN

- 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 and Mrs Tom and Aimee Mogford against the decision of Mid Devon District Council.
 - The application Ref: 22/01140/PNCOU, dated 8 June 2022, was refused by notice dated 8 June 2022.
 - The development proposed is described as for prior notification for the change of use of an agricultural building to a dwelling under Class Q.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the Appellants against Mid Devon District Council. This application is the subject of a separate Decision.

Main Issue

3. Although the Council has given two reasons for refusal on its decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify a single main issue.
4. The main issue is whether the proposal 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) (the GPDO), having particular regard to the requirements of paragraph Q.1.(a) in relation to agricultural use and to the limitations set out in paragraph Q.1(i).

Reasons

5. Schedule 2, Part 3, Class Q of the GPDO permits the change of use of a building and any land within its curtilage from a use as an agricultural building to a dwellinghouse, together with building operations reasonably necessary to convert the building to a dwellinghouse. Paragraph Q.1(a) states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.

6. The appeal site comprises land and a range of attached buildings consisting of store and livestock buildings at Higher Edgeworthy. The appeal scheme proposes the conversion of the attached range of buildings to a single dwelling.
7. In terms of paragraph Q.1(a) of the GPDO, the Council's contention arises from details that show that one of the range of buildings at the site has been used as a joinery workshop which, it is maintained, related to a carpentry business operating from the site from around 2007. In that regard the Council have put it to me that the building was not last in use for agriculture.
8. The submissions in this appeal indicate that the temporary use of this building for joinery work started during the COVID-19 lockdown period. At the time of my visit, I saw there were agricultural items including a moveable animal pen within that building, but there was no presence of any carpentry or joinery equipment.
9. It is not for me, as part of this appeal, to determine whether the temporary presence of, and activities associated with, joinery equipment at the site would constitute a change of use. There is no substantive information before me which confirms that the building was not in agricultural use on 20th March 2013. While it has been put to me that a carpentry business was operating at the site in 2007, the Appellants took ownership of the property some years later. Furthermore, the building has not been shown to be subject to a permitted material change of use. As such, whilst I note the Council's submissions, on this basis I find that the temporary limited joinery use of the building during a period of national restrictions regarding movement, would not have been likely to have been sufficiently sustained to erase the established historical agricultural use of the building. Accordingly, the requirements of paragraph Q.1(a) in relation to agricultural use are satisfied.
10. Notwithstanding the above, The GPDO states at paragraph Q.1(i) that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or external walls or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.
11. The Planning Practice Guidance (the PPG) states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. In this respect, building operations 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, would be permitted.
12. However, the PPG clarifies 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 is only where the existing building is already suitable for conversion that the building would be considered to have the permitted development right. This is a matter of fact and degree and requires an element of judgement.
13. My attention has been drawn to the judgement handed down in *Hibbitt v SSCLG* [2016] EWHC 2853 (the Hibbitt Case) which relates to the difference between conversions and rebuilding dealt with under Class Q. This is important because if a development does not amount to a conversion it would fail to be development permitted under Class Q (b). The case suggests that an

- agricultural building may be so skeletal and minimalist that the works needed to alter it to be used as a dwelling would be of such a magnitude that it would be tantamount to a new build or rebuild.
14. One of the range of attached buildings at the site, and described as building A within the main parties' submissions, comprises a timber portal framed shed with a dual pitch corrugated metal sheeting roof and compacted earth floor. Whilst there are large areas which are open, there are walls constructed with vertical timber boarding.
 15. The Appellants' structural investigations report provides that the perimeter walls and the timbers forming the portal frame at building A, appear to be in good condition. However, it is noted that the report also identifies that if additional resistance to building sway is required, then racking walls could be introduced. There therefore appears to be some indication that further structural rigidity may be required if racking walls are found to be needed.
 16. Nonetheless, in respect of this building, the timber frame and structure would be retained. The proposed works would include the installation of windows and doors, the replacement of the roof and external walls and the construction of a brick wall up to the damp proof course height. I acknowledge that the installation of windows, doors, roofs and exterior walls may amount to works reasonably necessary for the building to function as a dwellinghouse.
 17. However, the proposal would lead to the replacement of the majority of the elevational area of this building and which would also include the construction of a brick wall up to damp proof course level. Taken with the new roof I find that, as a matter of planning judgement, the totality of the works required, namely the wholesale replacement of the existing exterior walls and roof to provide the envelope of the proposed dwelling, would be substantial and a fundamental change to the external fabric of the building. In effect, although the building's framework would be retained, the majority of the resultant building would be new-build and tantamount to a new building.
 18. As noted above, the Hibbitt Case considered the difference between conversion and rebuilding. That case involved a proposal to convert a steel framed barn which was largely open on three sides and which proposed the construction of all four exterior walls. The proposal before me, would result in the building being stripped back to its framework. The starting point would, therefore, be a skeletal and minimalist structure, as was the position in the Hibbitt Case.
 19. In summary of the above, whilst I have concluded that on the balance of probabilities the site was in agricultural use at the required dates, in order 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, whilst I have no concerns regarding the other buildings that would comprise the proposed dwelling, it has not been demonstrated that the required works to building A at the site would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q. Consequently, the proposal would not be permitted development under Schedule 2, Part 3, Class Q of the GPDO.
 20. I have been referred to several applications concerning permitted development under Class Q of the GPDO, which the Appellants maintain have been approved

by planning authorities and which are comparable in terms of the totality of works required to facilitate conversion of agricultural buildings. However, the details provided in regard of individual cases are limited and do not include, for example, copies of the relevant officers' reports. I do not know all of the circumstances that led to those proposals being found acceptable by the relevant planning authorities. Whilst I note the Appellants' contention that works would be required, the plans and details provided predominately appear to show that matters such as external walling and roofs would be retained, not necessarily replaced, with some minor isolated works required.

21. While consistency in decision making is important, all decisions turn on their own particular circumstances based on the facts before each decision maker at the time. In any event, I must consider the proposal on its own merits based on the details and evidence before me.

Conclusion

22. For the reasons given above I conclude that the proposal is not permitted development and that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR