



Appeal Decisions

Site visit made on 19 June 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2023

Appeal A Ref: APP/D1265/W/22/3295773

Land off Eddy Green Road, Lytchett Matravers BH16 6HL

- 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 Mr & Mrs Cobb against the decision of Dorset Council.
 - The application Ref P/PAAC/2021/05701, dated 22 December 2021, was refused by notice dated 16 February 2022.
 - The development proposed is for conversion of existing agricultural building to a 2 bedroom residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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) (the GPDO), planning permission is granted for development consisting of (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 Use Classes Order¹ or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses).
3. In its decision notice, the Council has advised that the curtilage attached to the building exceeds what is permitted under the prior approval procedures, as set out under paragraph X of the GPDO.
4. The appellants are aware of this and that a further planning application would be required. They have stated that they would only require sufficient land to facilitate vehicular access to the dwelling and the ability to turn their vehicle. They proposed to submit a plan showing this. However, this did not form part of the original submissions considered by the local planning authority and interested parties at the application stage.
5. The *Procedural Guide – Planning Appeals – England* states that the appeal process should not be used to evolve a scheme. In my view, this would effectively change the red line of the appeal site and would materially alter what is being proposed. Such an amendment should be the subject of a fresh

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

application to the Council. I have therefore proceeded to base my decision on the plans as originally submitted.

Main Issue

6. The main issue is whether the proposed development would comply with the conditions, limitations or restrictions applicable to development permitted by Schedule 2, Part 3, Class Q of the GPDO having particular regard to:
 - the extent of the proposed curtilage and the interpretation of Part 3 of the GPDO set out at paragraph X; and
 - whether the building operations proposed are reasonably necessary for the building to function as a dwellinghouse and, if those requirements are met.

Reasons

Curtilage

7. Paragraph X of the GPDO states that curtilage means '(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser'.
8. The appeal site is outlined in red on the site location plan. It is a roughly rectangular shape and includes the barn that is the subject of this appeal and the access drive from Eddy Green Road to the barn as well as land to the front, side and rear of the barn. It amounts to an area significantly larger than the land area occupied by the agricultural building.
9. As such, the amount of curtilage around the building and subject to the change of use would exceed the definition of curtilage for the purposes of Class Q as set out in paragraph X.
10. I therefore conclude that due to the extent of the appeal site, the proposal would fail to meet the requirements of Class Q.

Building operations

11. Paragraph Q.1. under Class Q of the GPDO places restrictions on the building operations which can be undertaken. 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 allowed by paragraph Q.1(i)(i).
12. Paragraph 105 of the Planning Practice Guidance² (PPG) 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. Therefore it is only where the existing building is already suitable for conversion to residential

² Reference ID: 13-105-20180615

- use that the building would be considered to have the permitted development right.
13. The appeal property is a single-storey structure, with corrugated walls and roof supported by timber posts. It is enclosed on all sides but with openings to three of its elevations. The proposal to convert the building would include the replacement of the perimeter walls and the roof. The timber trusses, rafters and plates would be retained, repaired or strengthened where necessary.
 14. Caselaw³ has established that the building must be capable of conversion to residential use without operations that would amount either to the complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. There is, however, little guidance as to where the dividing line between a conversion and rebuild (or new build) lies. It is a question of judgement for the decision maker in each case having regard to both the type and extent of the works proposed.
 15. The Council considers that the extent of works would constitute a demolition and rebuild which would fail to meet the requirements of the legislation. The Council has agreed that the existing building is structurally sound and fit for purpose as a barn, but evidence has not been provided to demonstrate that it would be capable of supporting the loadings associated with a roof complying with the Building Regulations for a habitable building. Furthermore, the building would be fully re-clad and only the supporting structure and floor of the existing building would remain.
 16. The appellants have submitted a structural report on the condition of the building. Further addendum reports were subsequently provided to address concerns raised by the Council about the extent of building works. These reports have been produced by a civil and structural engineering consultancy.
 17. The most recent reports⁴ concluded that the timber frame barn is structurally sound. It states that no structural steel supports or beams would be required nor any of the existing timber poles need to be replaced although some would require treatment. It indicates that the existing concrete slab could be retained and the required damp proof membrane, insulation and screed could be applied. Alternatively, to extend the life expectancy of the building, it could be replaced by a new concrete slab which would not need to be supported by piles. However, this is not essential.
 18. The Council considers that the use of acrow props and other means of support indicates that the structural condition of the building does not meet the required standard. However, the addendum report has confirmed these are temporary measures to provide temporary support during repairs to any damaged or defective timbers. No structural supports would otherwise be required.
 19. I observed the building to be in a reasonable state of repair. The structural reports and information submitted by the appellant indicate some limited works would be necessary to convert the building. The cladding of the exterior walls, installation of windows, doors and a roof fall within the scope of permitted development. Whilst the Council has indicated that additional supports will be

³ Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

⁴ B E Willis, Addendum Report, dated 8 February 2022 and Bullet Point Information, dated 8 February 2022

required for the roof, I have limited evidence to support this position. The appellants' structural reports confirm this would not be the case.

20. For these reasons, I consider that the work would not go beyond what is reasonably necessary for the conversion of the building to residential use.

Other Matters

21. The appeal site lies within the Green Belt. However, planning policy on the Green Belt is not relevant to consideration under Class Q of the GPDO.
22. The appeal site lies within the catchment for the Poole Harbour Special Protection Area (SPA) and Ramsar site. The site also lies within the 400m to 5km buffer for the Dorset Heathlands SPA. These are European sites of nature conservation importance and statutorily protected under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations).
23. Natural England has advised that all new residential development that connects to wastewater treatment plants within the Poole Harbour catchment will have a significant effect upon the protected sites due to increased foul water discharge and hydrological changes arising from nitrates. Additional residential development will give rise to likely significant effects on the Dorset Heathlands SPA through increased recreational disturbance. Mitigation would be required to mitigate such harmful impacts.
24. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to establish whether the Regulation 77 process under the Habitats Regulations had been followed. However, as I am dismissing the appeal for other reasons, I have not considered this matter further.

Conclusion

25. Whilst I have concluded that the building operations would not prevent the proposal from being permitted development, the curtilage of the agricultural building would not meet the requirements under Class Q. For this reason, I conclude that the appeal should be dismissed.

Rachael Pipkin

INSPECTOR