



Appeal Decision

Site visit made on 15 May 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/D0121/W/23/3318636

Barn and land at Elwell Lane, Winford, Somerset BS40 8AH

- 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, Paragraph Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Cornelius Pearce against the decision of North Somerset Council.
 - The application Ref 22/P/2711/CQA, dated 7 November 2022, was refused by notice dated 24 January 2023.
 - The development proposed is change of use of an agricultural building and land forming the curtilage of the building to 2no. dwellinghouses (Use class C3) and associated building operations.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Cornelius Pearce against North Somerset Council. A further application for costs was submitted, late in the appeal process, by the Council against Mr Cornelius Pearce. These applications are the subject of separate decisions.

Preliminary Matters

3. The application was made under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). This permits 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 Schedule to the Use Classes Order; and (b) building operations reasonably necessary to convert the building.
4. Approval is being sought for change of use and associated building operations pursuant to Class Q(a) and Class Q(b) respectively. The Council considered the application on this basis, and I shall deal with the appeal in the same manner.
5. The red line site boundary extends beyond the footprint of the building. This additional area is affected by the proposed change of use and would form the curtilages of the new dwellings.

Main Issue

6. The main issue in this appeal is whether the proposal accords with the provisions of Schedule 2, Part 3, Class Q of the GPDO, having regard to the extent of the building works, and if so, whether it would be acceptable in relation to the transport and highways impacts, contamination risks on the site and whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to dwellings.

Reasons

Extent of building works

7. The appeal building comprises five, pre-cast reinforced concrete frames which combine to create a four-bay barn. The structure has blockwork walls between the frames, below metal cladding on the upper walls. The roof is covered with corrugated cementitious sheeting supported by concrete purlins and internally the building has a concrete floor slab.
8. The Council refused prior approval under Paragraph W(3) of the Order on the basis that insufficient information has been submitted to demonstrate that the building can be converted within the parameters of Class Q. The authority's evidence seeks to cast doubt on the conclusions of the submitted structural assessment, arguing that it lacks detail and is not based on a full inspection as parts of the building were not visible to the surveyor.
9. The appellant has provided an addendum to the structural report which relates to a physical investigation of the existing foundations. This concludes that the foundations are suitable for the development and reaffirms the findings of the first report that the building is sufficiently robust and structurally suitable to support a conversion to residential use. The same qualified structural engineer prepared the reports, and I have attached them significant weight.
10. The Council's statement of case has been informed with input from a Building Inspector. However, the balance of evidence leads me to the view that the building is suitable for conversion. There would be a need for some repairs to the concrete frame and purlins, and it was also apparent from my visit that replacement of metal bars supporting the cladding may be necessary to remedy a bow in the southern gable. However, these works do not turn the scheme into a "rebuild" of the type discussed in Hibbitt¹. No demolition would be required, and I am content that the existing floor slab would be suitable to support the loading associated with the new internal partitions and first floor. The Planning Practice Guidance makes clear that internal works, including internal structural works to allow for an upper floor, are not prohibited under Class Q.
11. Paragraph Q.1(i) of Class Q permits 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. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house. Having regard to the information before me, there is no indication that the works necessary to convert the building would go beyond those set out in this list.

¹ Hibbitt and Another v. Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

12. The Council has raised a specific concern over damp in the blockwork wall on the southern gable of the building. It suggests that, since the building is set below the prevailing external ground levels at this end, excavation works may be required to prevent moisture ingress. Whilst I cannot discount this possibility, there may also be other technical solutions and thus I do not consider that this issue would preclude the scheme from being permitted development.
13. To conclude, the proposed building works would constitute a conversion within the parameters of Class Q, and they fall within the scope of permitted development. I shall continue to consider the prior approval matters in dispute.

Transport and highways impacts

14. The proposed dwellings would be accessed along Elwell Lane which connects to the B3130 Barrow Lane. The alignment of Barrow Lane is such that visibility to the right, of traffic approaching from the north-west, is severely constrained by hedgerows. Visibility is acknowledged by the appellant's transport planning consultant as being woefully inadequate. The hedgerows had been recently trimmed at the time of my visit, but even this had not achieved adequate sight lines. A convex traffic mirror provides forewarning of approaching vehicles, but it does not make the junction safe, given that the speed limit along this stretch of Barrow Lane is 50mph. The Highway Authority has previously accepted the junction arrangement for other developments along the lane but in my opinion the poor visibility leads to an unacceptable risk of collision.
15. Visibility to the left, of vehicles approaching from the direction of Winford, is much better, but it is below the requirements set out in the Design Manual for Roads and Bridges. Although the deficiency against the standards is far less significant than in the opposite direction, it is not justified by reference to any speed data or other technical evidence. This weighs against the scheme.
16. The appellant explains that arrangements have been made to improve sight lines to the north-west for drivers exiting Elwell Lane by removing or relocating hedgerows. A plan is supplied showing a 2.4m x 45m visibility splay. Although the works shown on the plan would represent an improvement on the current situation, visibility would fall well short of the requirements for a minor road junction onto a major road with a 50mph limit. Although I have been provided with a signed deed from the landowner authorising the cutting back of the hedgerows, there is no agreement to relocate the hedgerow, which may be needed to achieve the required visibility. I have considered the possibility of a negatively worded 'Grampian' condition to secure visibility improvements but do not consider that it would meet the test of enforceability, given that there is a third-party landowner involved.
17. It is put to me that the junction is already used by agricultural traffic serving the site, and that the proposal would represent a beneficial reduction in the number of vehicle movements. Even if I were to accept this argument, and I am not convinced by the appellant's evidence, the nature of usage would be materially different. The proposal is likely to generate movements by private car whereas the probability is that, notwithstanding the use of 4x4 vehicles by farmers, a proportion of the traffic for an agricultural barn would be tractors and other specialist machinery with a high driver seating position allowing for views above the hedgerows of approaching traffic.

18. Overall, taking all factors into account, I am not satisfied that the development would achieve a safe and suitable access onto the classified road network. That the junction onto Barrow Lane is used by Mystique Barn and The Winford Retreat does not justify the increased risk of collision, even if I were to deem the trip generation figures associated with two new dwellings modest.
19. The Council has raised additional concerns over the condition of Elwell Lane and its appropriateness to serve the proposed development. Although adopted highway, the lane is unmetalled and photographs within the evidence show it to be muddy and flooded in places. I saw during my visit that Elwell Lane had been recently improved with new surface material. Although concerns are raised over the potential for conflicts between vehicles using the track to access the development and vulnerable users, there is at least one informal passing area and traffic speeds along the lane are low. The risks to walkers and horse riders would therefore be minimal. That the lane is unlit should not be a determining factor, not least because agricultural buildings converted under Class Q will often be in locations without street lighting.
20. In conclusion, the proposal would lead to unacceptable transport and highways impacts as a result of the poor visibility at the junction of Elwell Lane and Barrow Lane. Such impacts have not been mitigated under this application and are not justified by past planning decisions of the Council or the appellant's arguments over the volume and nature of traffic using Elwell Lane.

Whether the location or siting of the building makes the proposed change of use impractical or undesirable

21. Although the lane is suitable for residents to use in their private vehicles, I have not seen any measurements of lane width, meaning that I cannot determine whether it would meet minimum requirements for fire appliance access. This is not a highway safety issue per se, but it has a significant bearing on whether the location of the building makes it impractical or undesirable for the proposed change of use to take place.
22. The Council raises an additional issue under this heading, which is that the proximity of the proposed dwellings to an existing public footpath would lead to disturbance and loss of privacy. The footpath runs close to the north-eastern corner of the building, but I am not convinced that its use, which is likely to be infrequent in any event, is likely to impinge unacceptably upon occupants of the new dwellings.
23. My attention has been drawn to the fact that the red line site boundary does not extend to Elwell Lane. Had I been minded to allow the appeal, I would have sought information from the appellant on whether there was a legal right of access to the site from the public highway. However, as I am dismissing the appeal that is not necessary.

Contamination risks on the site

24. It was not clear at application stage whether the roof sheeting of the barn contained asbestos. The appellant has since provided the results of a sample analysis from 2016 which showed that asbestos was not present. The Council challenges the veracity of the report, but the appellant has confirmed that it relates to the correct barn, and I have no reason to question this.

25. The Council is concerned over the use of chemicals on the site. However, there is nothing to indicate any substantive risk to future residents. I am told that the building is used for livestock husbandry and for the storage of hay and smaller tools and equipment. There is no firm evidence to disprove the statement that neither the barn nor the land around it have been used for the storage of herbicides, pesticides or fungicides. As such, contamination risks on the site would not be a reason to dismiss the appeal.

Conclusion

26. I am satisfied that the appellant has supplied the technical evidence needed to demonstrate that the proposal would constitute a conversion under Class Q. However, the scheme would give rise to unacceptable transport and highways impacts with regard to the safety of the junction of Elwell Lane and the B3130 Barrow Lane. There is also insufficient information on the suitability of the lane for fire appliances which will affect whether the location or siting of the building makes the proposed change of use impractical or undesirable.

27. For these reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR