The Planning Inspectorate

# Appeal Decision

Site visit made on 15 August 2023

**by S Harrington MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 August 2023**

**Appeal Ref: APP/D0840/W/23/3314604**
**Lanuah Farm, Lane to Lanewa Farm, St Ewe, St Austell, Cornwall PL26 6ER**

- 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 'Order').
- The appeal is made by Messrs Peter Bowker, PB Architecture against the decision of Cornwall Council.
- The application Ref PA22/10245, dated 16 November 2022, was refused by notice dated 4 January 2023.
- The development proposed is the conversion of an existing portal framed barn structure into a single detached residential unit, adequate natural light will be provided to all habitable rooms. An adjoining lean to – unsuitable for conversion will be demolished and cleared away.

## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs has been made by Mr Peter Bowker, PB Architecture, against Cornwall Council. This application is the subject of a separate decision.

## Preliminary Matters

3. I have taken the description of development in the banner heading above from the application form. However as '*A full description of the works is shown on the attached drawings and Statement.*' is not an act of development, I have removed this element.

## Background and Main Issue

4. Schedule 2, Part 3, Class Q of the Order permits (a) the change of use of an agricultural building to residential use; or (b) the change of use together with building operations reasonably necessary to convert the building. In this case, both change of use and building operations to convert the building in question are proposed. The main parties disagree as to whether the scope of the building operations proposed would constitute a conversion of the building, and therefore, whether it would fall within the scope of the development permitted by Class Q(b).

5. The Council does not dispute that the proposal is acceptable with respect to the other matters required to be satisfied under paragraph Q.1.

6. Therefore, the main issue is whether the proposal would be permitted development by virtue of Schedule 2, Part 3, Class Q of the Order, having

regard to the extent of the proposed building operations and the requirements of the Order.

## Reasons

7. The appeal building is a pre-cast reinforced concrete framed structure featuring four frames, a corrugated sheet pitch roof and a timber framed attached lean-to structure. The proposal would involve demolition of the lean-to but would see the retention of the existing building frame and roof. Noting the proposed removal of the lean-to, the structure of frames lacks any significant cladding to the elevations and is open sided.

8. Paragraph Q.1(i) of the Order permits the installation or replacement of windows, doors, roofs, or exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse and partial demolition to the extent reasonably necessary to carry out such works. The Planning Practice Guidance (PPG) provides further guidance in this regard, establishing 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 use that the building would be considered to have the permitted development right.

9. A previous application[1] relating to the appeal building incorporated a structural engineer's report. Whilst this report is not within the evidence before me, I note the appellant states that this report noted that the structure was not deemed capable of taking further loadings and that certain repairs were needed to the concrete portals where some spalling had taken place. I observed that some repairs have taken place to the concrete frames, however some cracking of the concrete was still evident, with some areas of internal metal reinforcement exposed.

10. A further structural report (SR) prepared by 'MW Perry B.Eng(Hons), MRICS, I.Eng, AMIStructE' dated November 2022 accompanied the application the subject of this appeal. The appellant's submission show that infill panels between the existing frames would be utilised and the appellant states that these are non-structural and are designed to be self-supporting pre-fabricated and pre-insulated infills. The SR states that *the external walls will need to be lined with a new timber framed structure or similar* and *this framing could be constructed off of a thickening to the proposed floor slab, and should be designed to be tied back to the existing frame. The lining can also support additional loads imposed on the building due to floor and ceiling structures.* The SR continues that *internal partitions can be designed to provide some additional propping to the frames in order to ensure their structural adequacy.*

11. I acknowledge the SR concludes that the building is in reasonable condition and should be suitable for conversion, and also notes that there is no sign of movement to the building envelope and no substantive structural evidence has been provided by the Council to refute this conclusion. Notwithstanding, I observed at my site visit cracking and exposed metal re-enforcement in areas not subject to recent repairs and also note a lack of definitive conclusions or structural calculations within the SR in relation to the loadings of the proposed works.

[1] PA21/12670

12. Therefore, whilst it is not a prerequisite that structural calculations are required, I find there is some uncertainty as to whether the existing building would have suitable capacity to support the proposed works without additional structural intervention. Notwithstanding, even if it is the case that the existing structure provides suitable structural capacity, a demonstration of the structural integrity of the frame alone is insufficient to meet the requirement of the Order in this case.

13. The Order does not define what is meant by 'reasonably necessary' building operations. However, the court judgement in the case of *Hibbitt v Secretary of State for Communities and Local Government [2016] EWHC 2853*, considers how this element of the Order should be interpreted. The judgment found that whilst some building operations which would affect the external appearance of the building should be permitted, the building must be capable of conversion to residential use without operations that would amount either to complete or substantial rebuilding of the pre-existing structure or, in effect, the creation of a new building. Whether or not the proposals go beyond the scope of conversion is a matter of fact and degree and requires an element of judgement.

14. The appeal building would not be capable of functioning as a dwelling without the building works outlined above which include a significant amount of new fabric including the construction of new infill walls and fenestrations to all elevations. Furthermore**,** whilst I acknowledge the PPG confirms that internal works are not generally development, the proposed internal partitions and reinforced concrete floor slab, which could provide additional propping to the existing frames to ensure structural adequacy, contribute to the overall building operations proposed to provide a dwelling in this case.

15. The lack of external walls results in the existing building being a skeletal structure and the works proposed are substantial. Although I acknowledge that substantial works could fall under the scope of that permitted by the Order, I find the proposal would go well beyond what could reasonably be described as conversion. In combination, whilst utilising the existing frame and corrugated roof, the works described would be so extensive as to comprise rebuilding.

16. Other allowed appeals, as well as applications granted by a range of Councils have been brought to my attention by both parties. With regard to the appeal at Moorlands Farm Barn[2], this differs from the current appeal proposal in several respects. Whilst I note the timing as indicated by the appellant, it predates amendments to the PPG and the *Hibbitt* judgement. Furthermore, the Council withdrew its reason for refusal in relation to structural design based on an addendum to submitted structural information, details of which have not been provided to me.

17. In relation to the applications granted at Cerne Abbass[3], Dorset; Hills View Farm, Tickhill[4]; and Loosedown Farm, Liskeard[5]; limited information has been provided. However, it appears that the building at Cerne Abbass was a steel portal framed building comprising a rough concrete floor and half-height

[2] APP/Z3825/W/16/3148879
[3] 2/2017.1055/AGDWPA
[4] 20/00329/2020
[5] PA20/07585

concrete block walls with timber Yorkshire-boarded upper walls, thereby a more substantial structure to the current appeal proposal. Whilst Hills View Farm also appears to involve a building utilising precast concrete portal frames, as with Looedown Farm, Liskeard, no details of the Council considerations or detailed information of the existing building or method of conversion have been provided. I also note the differences between the structure at Higher Welby, Boyton[6] and the current appeal proposal. For these reasons the equivalence of the other cases to the current proposal are limited. Moreover, the current appeal proposal has its own circumstances and I have determined it on its own merits.

18. In conclusion, I find that the proposed works to provide a habitable dwelling would be extensive and of such a scale that they would go beyond what might reasonably be described as a conversion. Consequently, I find that the works necessary to create a dwelling from the existing structure would not fall within the scope of that permissible under Schedule 2, Part 3, Class Q of the Order and accordingly would not be permitted development.

**Other Matters**

19. The appeal site lies within close proximity of the Fal and Helford Special Area of Conservation. Article 3(1) of the Order grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the Order and would affect a European protected habitat. Permitted development cannot be lawfully begun until the developer has made a Regulation 77 application and the Council is satisfied that the development would have no adverse effect on the integrity of the habitat.

20. Neither the Order, nor Regulations 75-78 prescribes the sequencing of prior approval and Regulation 77 applications. The requirements of both procedures must be met before the development can be lawfully begun, but it is not the case that the appellant must have written notification of a Regulation 77 approval before seeking prior approval, or vice versa.

21. Therefore, while I note that a financial contribution has not yet been secured within a planning obligation in relation to Strategic Access Management and Monitoring as detailed within the European Sites Mitigation Supplementary Planning Document July 2021, a Regulation 77 application would have been a matter for the main parties to address outside of this appeal before the development starts if this appeal were to have been successful.

22. It has been drawn to my attention that the appeal building is not in isolation in open countryside but forms the backdrop to a number of existing barns presently being converted. While I observed that this is the case, given the requirements of Schedule 2, Part 3, Class Q of the Order, this is not determinative in this appeal.

23. My attention has also been drawn to a Government consultation in relation to updating permitted development rights. Although the consultation relates in part to Schedule 2, Part 3, Class Q of the Order, the consultation is ongoing,

[6] APP/D0840/W/22/3292152

and closes in September 2023. Therefore, the findings of the consultation, or indeed any resulting change to the Order are not yet known and only very limited weight can be afforded to it.

24. Given my conclusions on the main issue that the proposal would not be development permitted under Class Q of the Order, there is no need for me to consider whether or not prior approval would be required for the matters specified in the Order as it would not alter the outcome of the appeal.

**Conclusion**

25. For the reasons given, I conclude that the appeal is dismissed.

*S Harrington MA MRTPI*

INSPECTOR