



Appeal Decision

Site visit made on 8 August 2023

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/U2235/W/22/3307371

Elmscroft Farm, Charlton Lane, Kent, West Farleigh ME15 0NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mrs Alex Easterbrook against the decision of Maidstone Borough Council.
 - The application Ref 22/500613/PNQCLA, dated 4 February 2022, was refused by notice dated 6 April 2022.
 - The development proposed is change of use of 'East Barn' and 'West Barn' to form two dwellings Pursuant to Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Approval was sought under Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended) (GPDO). Class Q relates to (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) and (b) building operations reasonably necessary to convert the building. For development to be permitted it must satisfy the limitations set out at paragraph Q.1 and the conditions at Q.2.
3. Paragraph W of Part 3 provides the procedure for applications for prior approval required under condition. This includes (at W(3)) the power to refuse an application where a developer has provided insufficient information to enable accordance with Part 3 to be established.

Main Issue

4. The main issue is whether, or not, the proposal is capable, in principle, of benefiting from the permitted development rights conferred by Class Q, paying regard to the condition at Q2(1) (prior approval) and the limitation at Q1(i) (reasonable necessity).

Reasons

Prior approval

5. The condition at Q2(1) makes the rights under Class Q subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to specified matters.
6. Paragraph W of Part 3 sets out the procedure for prior approval applications made under Part 3. Paragraph W(11) provides that development must not begin before the occurrence of one of the following – (1) receipt of written notice that prior approval is not required, (2) written notice of prior approval given, (3) expiry of the prescribed period with no decision taken. None of these events have occurred and there is no legal power to make a determination retrospectively.
7. During the course of my visit I observed that some works had been undertaken. This matter was queried with the parties following the visit and the Appellant provided a further statement, which the Council declined the opportunity to comment upon.
8. The Appellant's further statement sets out works that have taken place at the site between November 2021 and May 2023. This includes works relating to the removal and reinstatement of the roofs following storm damage, some of which post dates the Council's decision. Replacement windows are also indicated. There is no evidence of any of the new openings indicated on the plans having been made.
9. The Appellant's stated wish is to restore the farmyard in order to make it safe and usable for its current purpose in light of what they regard as a site that was dilapidated, a blight, and potentially dangerous. The works aimed at securing this purpose naturally have a cross over and commonality with the those proposed in this appeal.
10. Paying regard to the physical state of the site, the extent of proposed works in totality, the Appellant's stated intentions, and the lack of evidence to contradict them, I am satisfied on the balance of probabilities that the works were not carried out with the specific intention of commencing the works and use that Class Q is capable of authorising. This is a fact and degree planning judgement.
11. It is beyond the scope of this appeal to determine whether any of the works carried out required planning permission. Nor does the question of whether the Council were informally aware of the works, or not, have a bearing on my decision.
12. For the reasons set out, the proposal is capable as a matter of principle of complying with the condition at Q2(1) (prior approval), which has not been frustrated by the works that have been carried out.

Reasonable necessity

13. Limitation Q.1(i) restricts building operations other than those set out, to the extent they are reasonably necessary for the building to function as a dwellinghouse. Partial demolition is allowed to the extent that it is reasonably necessary to carrying out building operations allowed by the limitation.

14. Both parties draw my attention to the case of *Hibbitt*¹. It is common ground that Class Q should be regarded as authorising conversion of a building, rather than rebuild. Neither of these terms are subject to express legal definition and the question of whether a particular proposal is one or the other is a matter of judgment based on fact and degree. The specific facts of *Hibbitt* itself, as distinct from matters of principle, do not offer much assistance with this context specific judgement.
15. In this case, the Council have drawn my attention to a number of specified works that they believe collectively indicate that the proposal exceeds the limitation at paragraph Q.1(i). They are listed in paragraph 4.2 of the Council's statement of case. The specified works are drawn from the Appellant's structural evidence.
16. As a matter of fact and degree, the specified works appear extensive. However, this matter could only really be judged through an examination of the building in context alongside an up to date evidence base. This is challenging in light of the works that have taken place. Notwithstanding my conclusions on the first main issue, the need to undertake the works and the Appellant's own description of the buildings as dilapidated, a blight, and potentially dangerous add some credence to the Council's concerns.
17. This is, however, an anecdotal observation and not evidence of substance that leaves me able to reach a conclusion one way or another on whether the buildings are capable of conversion within the parameters set by the GPDO, paying regard also to what national guidance says about the intentions behind the rights². Nevertheless, the evidence (including the structural assessment) does not represent a current and therefore reliable assessment of the state of the buildings on which to reach a conclusion on reasonable necessity. Given the works undertaken, it is important to take a precautionary approach to this issue in the interests of ensuring clarity for all parties about the nature and extent of the works.
18. In this regard, as much of it predates the works undertaken, the Appellant has provided insufficient information to enable me to establish whether the proposal complies with the requirements of the GPDO. Although, specific legal authority is provided for this conclusion within paragraph W(3) of the GPDO, this approach is also consistent with more general principles of due diligence and ensuring that reasonable information is available to support planning judgements.
19. For the above reasons, I cannot conclude that the buildings are capable, in principle, of benefiting from the permitted development rights conferred by Class Q, paying regard to the limitation at Q1(i) (reasonable necessity).

Conclusion

20. For the reasons given, and taking into account all the other points made, I conclude that the appeal should be dismissed.

D R McCreery

INSPECTOR

¹ [2016] EWHC 2853 (Admin)

² Paragraph: 105 Reference ID: 13-105-20180615