



Appeal Decision

Site visit made on 16 August 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2023

Appeal A: Ref: APP/Z1510/W/22/3307373

Land North West Of Whitehouse Farm, Finkle Green, Birdbrook CO9 4BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 appeal is made by Mr Hodge of Your Pad Developments Lts against the decision of Braintree District Council.
 - The application Ref 22/00590/COUPA, dated 4 March 2022, was refused by notice dated 29 April 2022.
 - The development proposed is described as Conversion of agricultural buildings into C3 residential dwellings - see 2130 PI 500 for location and block plan. 2130 PL 802 and 803 for fenestration details.
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Appeal B: Ref: APP/Z1510/W/23/3315451

Land North West Of Whitehouse Farm, Finkle Green, Birdbrook CO9 4BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 appeal is made by Mr Hodge against the decision of Braintree District Council.
 - The application Ref 22/02512/COUPA, dated 21 September 2022, was refused by notice dated 15 November 2022.
 - The development proposed is described as Conversion of agricultural buildings into C3 residential dwellings - see 2130 PI 500 for location and block plan 2130 PL 802 and 803 for fenestration details.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Background and Procedural Matters

3. The two appeals relate to the same site and buildings for proposals for the conversion of buildings to residential dwellings under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). While I have considered each appeal on its own merits, to avoid duplication I have dealt with the appeals together, except where otherwise indicated.

4. The Council refused appeal A due to its view in respect of prior approval of matters under conditions in Part Q.2. The decision notice listed that prior approval was required in respect of all matters (a) – (g) of Q.2. However, it has only raised substantive matters in respect of (e) and (f) and the officer report states that (a) – (d) and (g) are satisfied. I have taken the view that only (e) and (f) are disputed. Condition (e) is that the location or siting of the building makes it otherwise impractical or undesirable for the building to change use, and (f) is in respect of a buildings design or external appearance.
5. The Council's decision notice lists two reasons for refusal for the Appeal B scheme. The first is it considers the development is not permitted under Q.1(h) and Q.1(i), due to (Q.1(h)) it not being clear that some cladding does not extend beyond the footprint, and (Q.1(i)) there is insufficient evidence to assess whether the building operations would exceed those reasonably necessary for the building to function as a dwellinghouse. The second reason is that it considers prior approval should be refused under conditions (e), (f), and (g) (relating to adequate natural light).
6. The Council did not object to Appeal A on ground Q.1 (i) based upon the same Structural Report¹ (SR1), so it is necessary the matter is considered as a main issue for Appeal A. The appellant provided me with a revised version of the structural report² (herein SR2) submitted for a third application³ recently refused in relation to matters under Q.1(i). SR2 raises matters of relevance to Appeals A and B. I have sought the views of the Council and the appellant in these regards and taken them into account in determining these appeals.
7. The appellant has submitted a revised design for the smaller Appeal B building. The Procedural Guide: Planning Appeals – England (2023) states the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the Local Planning Authority, and upon which interested people's views were sought. The amended scheme would be a significant and material change to the external appearance. Taking into account the Wheatcroft⁴ principles, I have considered appeal B based upon only the application scheme submitted to and determined by the Council.

Costs Application

8. An application for costs is made by Braintree District Council against the Appellant. That application will be considered through a separate process.

Main Issues

9. Against the above background, the main issues are:
 - whether or not appeals A or B are permitted development under Class Q with reference to the requirements of Q.1 (i);
 - whether or not appeal B is permitted development under Class Q with reference to the requirements of Q.1 (h);

¹ By Howe Structural Consultants Limited, dated 06/12/2021 (Job No 211014).

² By Howe Structural Consultants Limited, dated 06/12/2021 (Job No 211014) Rev. B.

³ Ref. 23/01151/COUPA.

⁴ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37].

- whether or not prior approval should be granted for Appeals A and B in respect of the matters set out in conditions (e) and (f) of Q.2; and,
- whether or not prior approval should be granted for Appeal B in respect of the matters set out in condition (g) of Q.2.

Reasons

Permitted Development – Q.1(i)

10. Works not permitted by Q.1(i) are those 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 reasonably necessary to allow works under Q.1(i)(i). The Planning Practice Guidance (the PPG) provides further guidance upon these requirements.
11. The PPG (ID: 13-105-20180615) states it is not the intention of the permitted development rights 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 to residential use that it would have the rights. The parties do not appear to disagree that foundation or strengthening works are generally not considered reasonably necessary for the building to function as a dwellinghouse.
12. SR1 states an individual trial pit for each building recorded foundations at 600mm depth for the smaller building and 700mm for the larger building. Overall, it concludes the buildings are supported on substantial structural foundations usually suitable and adequate to carry any reasonable loadings, so deemed suitable for a conversion under Class Q, and there is general satisfaction with the structure for the conversion. This is despite SR1 stating that particular cracking on the right-hand elevation of the large building is in proximity to a trench which has undermined the footing.
13. SR1 states that appropriate measures would need to be taken to prevent further movement on that right-hand elevation during the conversion where the footing is undermined, but they are not explained. It also refers to the supporting of new masonry walls and the potential for strengthening the ground floor with reinforcement. But neither conclusion is expressed in SR2. Instead, in respect of the right-hand elevation it states the crack is having no structural impact and is silent on whether the footings have been undermined.
14. Both SR1 and SR2 state the foundations would usually be suitable and adequate to carry reasonable loadings, but subject to building regulations structural calculations, although no schedule of works or calculations are submitted for either appeal scheme. The Planning Statement also states that some strengthening of the foundations may be required⁵, although it is subsequently clarified there will be no structure reinforcement by new internal walls, they will not be load bearing and do not need foundation strengthening⁶.
15. Notwithstanding the conclusions of SR1 and SR2 set out above and further clarification by the appellant, even were I to agree that many of the matters in question are sufficiently addressed, it is not fully explained how the

⁵ Page 5 of the Planning Statements by PHD Associates (incl. Revision A 13/10/22).

⁶ Letter from Howe Structural Consultants dated 24/08/2023.

undermining of the footings on the right-hand elevation are to be addressed. The appellant's engineer states SR2 was revised because the observation in respect of the crack in proximity to the trench was a general observation not of relevance to a Class Q conversion. However, I disagree.

16. Although it is suggested the culverting of the trench could take place, this does not explain the nature and extent of works necessary to address the footing. The evidence does adequately detail how the building defect will be addressed, demonstrate that works fall within the scope of Q.1(i), and that they would be within the existing building dimensions.
17. Class Q does not specify a structural report is required or that it is necessary seek a structural engineer's view upon submitted evidence. However, evidence needs to be sufficient to determine that a proposal falls within the definitional scope of development permitted⁷. For the reasons set out above, it has not been demonstrated that works required to construct appeal scheme A and B would only entail works falling within Q.1(i).
18. Of the appellant's summaries of evidence for other Class Q schemes consented by the Council⁸, none are understood to have included structural calculations or a scheme of works. However, each conversion will be circumstance specific depending upon the existing structure and circumstances, a visual inspection may be sufficient. It is simply not clear whether the structures, matters raised, and conclusions reached in the schemes referenced, raise the same matters as these proposals. It is not clear if the 2019 proposal pre-dates the legal judgement referred to by the Council⁹, which might account for that differing approach. There are matters raised in these appeals that mean the evidence provided does not demonstrate the works fall within Q.1. I attribute the other decisions limited weight.
19. Similarly, the Council cites other appeal decision letters¹⁰ to qualify its concerns. The full details of evidence before those Inspectors are not before me, and each proposal must be considered on its own merits. Ref. 3296556 involved brick structures, with no openings formed or trial holes for inspection, and the decision letter suggests that the building required significant demolition and some new foundations. In Refs 3280379 and 3280380 there was no inspection of the roof or foundations, and the evidence could not rule out all structural works. Therefore, they are not directly comparable to the appeal schemes, and I attribute them limited weight.
20. Where the developer has provided insufficient information to establish the development complies with any conditions, limitations or restrictions in Part 3, under paragraph W(3) of the GPDO an application may be refused. The evidence has not demonstrated the developments would only entail works permitted by Q.1(i). Therefore, appeal A and appeal B should not succeed.

Permitted Development – Q.1(h) (Appeal B only)

21. Paragraph Q.1(h) states that development is not permitted if it would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. There are some minor

⁷ New World Payphones Ltd v Westminster City Council [2019] EWCA Civ 2250.

⁸ 19/01179/COUPA; 23/00727/COUPA; 23/00591/COUPA; 23/00522/COUPA.

⁹ New World Payphones Ltd v Westminster City Council [2019] EWCA Civ 2250.

¹⁰ APP/W0340/W/21/3280379; APP/R0660/W/22/3296556.

inconsistencies between the plans and what I saw at my visit. The existing plans do not appear to include a lean-to and guttering on the larger building.

22. There are also some differences between the proposed elevation and floor plans. The elevation plans show first-floor cladding would cover the first-floor windows and indicate none of the first floor would project beyond the ground floor, or the external elevations of the existing walls. However, the floor plans suggest some first-floor windows would project marginally beyond the first-floor wall as shown, and also does not clearly indicate the cladding shown over the windows.
23. From what I saw, the lean-to roof, wide guttering and roof eaves appear to be the features that correctly define the outer dimensions of the building. On this basis, from what I saw and the plans before me, it appears that Appeal scheme B would not project beyond the external dimensions of the existing building, and Q.1(h) is met.

Matters for prior approval

24. For the reasons set out above, it is not demonstrated that either appeal scheme falls within the scope of permitted development rights under Class Q.1(i). However, were I to have shared the appellants view on this matter, consideration would need to be given to prior approval matters under Q.2.

Matters for prior approval – Q.2 (e) and (f)

25. The appeal site is close to the Grade II listed Whitehouse Farm. Its significance and special historic interest are in the architectural and historic value of its construction, features, layout and evolution as a farmstead in a post medieval dispersed settlement. It has early 17th century origins but was raised and extensively altered. The farmhouse is a timber frame plastered building under a red clay tile roof with notable construction and layout features. It is still clearly legible as a historic farmhouse with some historic outbuildings as the remains of the farmstead.
26. The listing description suggests its unusual plan form might be due to it originally comprising 2 houses in a unit system group for 2 households working the same land, later combined as one house. The farm was likely to have been redeveloped sometime between 1840 – 1870, with little further development until the 1960's onwards when further building and expansion took place when farming prosperity returned. The appeal site became part of the farmstead when its buildings were constructed from the 1960's onwards.
27. As well as the surrounding farmland, the simple utilitarian agricultural buildings including those of the appeal site are a significant part of the setting. They might be considered as being of little heritage interest in their own right. However, their position preserves part of the historic courtyard arrangement. They are understood to be typical regional examples of agricultural buildings that contribute to the significance of the heritage asset due to their simplicity and as an illustration of the continuity of function, evolution of the farmstead, the functional relationship with it and with the surrounding agrarian landscape.
28. While the appeal site buildings became separate to the farm, given their proximity, they can still be perceived as one unit, contributing to the setting and significance. In the present state the appeal site is informal, but neither unsightly or out of keeping with the character and appearance of the area.

29. Both proposals would alter the legible character of the appeal site and buildings, changing that part of the setting from a rural farmstead to a highly apparent modern domestic setting. From either appeal scheme there would be affects from the intensity of domestication including from paraphernalia, light, parking, activity, and comings and goings. However, taking into consideration their previous agricultural use and the farmhouse being used as a dwelling, the harmful effects from the use would be relatively limited.
30. Appeal scheme A includes an extensive level of glazing on both buildings. Such is the level of glazing on both, it would highly modernise and disjoint the elevations. It would result in a highly incongruent appearance to its surrounds, and it would not be sympathetic to their simple agricultural appearance, resulting harm to the setting of the heritage asset particularly from the smaller building. The harm would be of a moderate level.
31. For appeal scheme B the design and materials such as cladding and the glazing on the larger building, while being of a relatively contemporary appearance, has been more sympathetically designed and overall would largely retain the simple agricultural appearance. The eastern and western elevations of the smaller building are also fairly simple and sympathetic to its agricultural appearance. However, the flank elevations would have a mixture of different window designs, shapes, and sizes, including a slanted windows above the door, first floor and above bi-fold doors.
32. The angles follow the roofline, but their design and arrangement result in a rather complex, contemporary and domesticated appearance. These elevations are highly jarring and not reflective of the simple agricultural appearance of the building and those in the immediate surrounds. The southern elevation is close to and highly prominent in the setting of the heritage asset from the highway in front of the asset with intervisibility between the two. The visibility of the northern elevation in the context of the heritage asset is more limited, but still discernible from certain points to the north.
33. Taking each scheme as a whole, the overall effects of each would be significantly negative. Conditions such as in respect of the materials or landscaping could not adequately mitigate the harm. From the evidence before me, the most recently refused application was a different design found acceptable on design and heritage grounds, so not directly comparable.
34. The resumption of an agricultural use would retain the agricultural character and appearance of the appeal site, so would be likely to result in markedly less harm than the appeal proposals. As they are not currently used for agriculture, there is no evidence demonstrating the buildings would be likely to be replaced. These matters attract limited weight. The findings in the appeal decision letters referred to by the Council¹¹ are highly context and scheme specific. Therefore, while I note the principle that the effect upon a heritage asset is a material consideration as part of assessing prior approval matters, my assessment and findings are specific to appeal schemes A and B.
35. The specific requirement under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to have special regard to the desirability of preserving a listed building or its setting, only applies to applications for planning permission. In this case, planning permission has already been

¹¹ APP/Y1138/W/15/3013893; APP/C3620/W/153025999; APP/C1570/W/15/3035826.

granted by Article 3(1) of the GPDO, subject to prior approval. However, the Framework needs to be taken into account, and it requires that any harm to the significance of a designated heritage asset be afforded great weight and shall be weighed against the public benefits of a proposal.

36. Both proposals would refurbish the buildings, remove asbestos, and result in certain improvements to some parts. The provision of 5 new dwellings would be a moderate contribution to supply with associated social and economic benefits during construction and upon completion, including supporting the rural economy, services, and facilities. There is some potential for biodiversity, landscape and drainage enhancements as outlined. There is no evidence to suggest compliance with other prior approval requirements such as highways, living conditions or contamination, would be anything other than neutral matters. Overall, all the benefits advanced attract moderate weight in favour of each scheme. They do not outweigh the harm to the setting and significance of the heritage asset from each scheme, which attracts great weight.
37. For the reasons set out above appeal scheme A and B would be harmful to the setting and significance of a designated heritage asset and the design and appearance of the building for both schemes are not acceptable. The Council has not specifically reasoned why it would be impractical to convert the buildings. However, the designs and external appearances and the resultant effects upon the setting of a heritage asset, means the location and siting makes it undesirable for them to be converted. Therefore, prior approval for appeal schemes A and B should be refused.

Matters for prior approval – Q.2 (g) (Appeal B only)

38. This scheme proposes cladding over the windows that would act as the primary source of light serving all first-floor habitable rooms on the large building, most of which would be on its northern side where sunlight would be limited. The plans that would be approved indicate cladding coverage would be significant for each window with only a limited proportion allowing natural light to pass. The plans also do not clearly show how the lean-to structure would affect this. There is no formal daylight assessment with this scheme to explain it.
39. While bedrooms might have a primary function of being used for sleep and rest, this is not typically the only function of bedrooms, which might include activities such as studying, leisure and relaxation. The design, details, location and extent of cladding on another scheme referenced, is not before me, or fully explained by the appellant. The Council suggests the scheme included additional voids, suggesting it is not directly comparable to this proposal.
40. The cladding would result in limited natural daylight penetrating the windows and some darkened habitable rooms. While the appellant suggests a condition be imposed for the installation of rooflights, they are not on the scheme before me, and the case has not been made that a condition could require operational development that amends a scheme for which prior approval is sought. It is not demonstrated the scheme would allow adequate natural light for the occupiers, required by Q.2(g), so prior approval should be refused.

Other Matters

41. The Council's ecological adviser raises an objection on the grounds the proposals are not accompanied by sufficient information in respect of European

protected species, although the Council does not object in this regard. As the appeals fail for other reasons, I have not considered this matter further.

Conclusion

42. For the reasons given above, and taking into account all the matters raised, appeal A and appeal B are dismissed.

Dan Szymanski

INSPECTOR