



Appeal Decision

Site visit made on 25 July 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/K0235/W/23/3314830

Bell Farm, Wilden MK44 3DA

- 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 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 R A Gibson against the decision of Bedford Borough Council.
- The application Ref 22/02070/CPNQ, dated 12 October 2022, was refused by notice dated 23 November 2022.
- The development proposed is the change of use from an agricultural building to a C3 dwelling house. The application is in accordance with Class Q, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The proposed development will create a four bedroomed single storey dwelling. The proposal includes provision for four parking spaces within the ancillary curtilage area extending to 317.18m² which is less than the proposed floorspace of 317.93m².

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3 and Schedule 2, Part 3, Class Q, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of agricultural buildings to a dwelling house at Bell Farm, Wilden MK44 3DA, in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph Q.2 (1) of the GPDO through application ref 22/02070/CPNQ, dated 12 October 2022. The approval is subject to the conditions set out in the GPDO and the following additional conditions:
 - 1) The development shall be carried out in accordance with the mitigation and avoidance measures, enhancement measures and recommendations set out in sections 5, 6 and 7 of the Ecological Impact Assessment dated July 2022. These measures shall thereafter be retained for the life of the development.
 - 2) No works to Barn 1 (the larger traditional barn) shall commence until the local planning authority has been provided with either a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017, authorising the specified activity/development to go ahead, or b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.
 - 3) No removal of hedgerows, trees or shrubs, or works to buildings or structures that may be used by breeding birds, shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of these for active birds' nests immediately before the vegetation is cleared or works to buildings

undertaken, and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority before clearance or building works commence.

- 4) Prior to occupation of the development, a "lighting design strategy for biodiversity" for South Brook shall be submitted to and approved in writing by the local planning authority. The strategy shall:
 - a) identify those areas/features on site to which bats are particularly sensitive and that are likely to cause disturbance in or around their breeding sites and resting places, or along important routes used to reach key areas of their territory, for example, for foraging; and
 - b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved strategy, and these shall be maintained thereafter in accordance with the approved strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Application for Costs

2. An application for costs was made by Mr R A Gibson against Bedford Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposed development in the banner heading above is taken from the application form. However, I have removed the superfluous wording in the decision in the interests of conciseness.
4. Article 3 and Schedule 2, Part 3, Class Q of the GPDO, grants planning permission for: (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; 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) of that Schedule. Such development is permitted subject to the limitations and restrictions set out within paragraph Q.1. (a) to (m) inclusive.
5. Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted 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 to assess a limited range of matters, listed (a) to (g) at paragraph Q.2.(1).

Main Issues

6. The main issues are i) whether the proposed development would comply with the requirements applicable to development permitted by Class Q of the GPDO, with particular regard to the extent of the proposed building operations; and ii) whether information relating to household waste collection from the proposed development is required.

Reasons

Whether permitted development

7. The appeal site comprises two adjoining barns that are sited in an L shaped form. Both are accessed by an existing hard surfaced private road, which leads into a concrete yard.
8. The larger of the two barns, which I shall refer to as Barn 1, is a traditional timber framed building. It has a concrete floor and a low-level concrete plinth wall around part of its perimeter. The external walls consist of horizontally clad timber boards and the pitched roof is covered with corrugated steel sheeting containing roof lights. The barn has high level eaves, and there are large openings with no doors attached in either end. Although the external timber wall cladding is missing or damaged on some parts of the building, this could be easily repaired or replaced without the need for planning permission, as a maintenance operation that would not materially alter the external appearance of the building.
9. The smaller barn, which I shall refer to as Barn 2, also has a concrete floor. It has an open frontage, with timber supports, facing into the yard and a shallow mono-pitch roof, covered with asbestos cement fibre roof sheets. Both the rear wall and the side wall adjacent to Barn 1 are constructed in brick. The end wall comprises a low brick plinth wall, above which corrugated steel sheeting is attached to a timber frame.
10. Paragraph Q.1. (i) of the GPDO 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 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'.
11. The external works proposed would include the installation of new window and door openings, replacement roofing and repair/replacement of timber cladding. The open frontage of Barn 2 would be enclosed with a low level brick plinth, timber boarding and glazed doors. The corrugated steel sheeting on the end wall would be replaced with timber boarding to match the rest of the buildings. The proposals would be reasonably necessary to enable the buildings to function as a dwelling and would not extend beyond their existing profile or comprise an enlargement. Although significant internal works would be required, these would be contained within the outline of the existing buildings.

12. The submitted Building Condition Report, which includes structural calculations, confirms that the barns are suitable for conversion, in their current state. As this report appears to have been informed by a suitably qualified person and the Council has not provided any compelling evidence to the contrary, I have no reason to doubt its conclusions and I therefore afford this significant weight.
13. The evidence before me confirms that the existing barns are strong enough to facilitate the proposed external alterations shown on the plans, which would be reasonably necessary to enable the barns to function as a single dwellinghouse. The other works required would be internal, would not materially affect the external appearance of the building and thus would not amount to development as defined by Section 55 of the Town and Country Planning Act 1990.
14. Given my findings above I find that the installation of windows, doors, roofs and exterior walls as proposed are reasonably necessary for the buildings to function as a dwellinghouse. In this regard there would be no conflict with GPDO paragraph Q.1. (i).
15. I have been referred to case law¹, in which it is clear that the divide between what is a conversion and what is re-build or fresh build, is a matter of planning judgement. In the case of Hibbitt, the building to be converted was a modern skeletal steel framed building, which with the exception of 6 steel uprights supporting a mono-pitched roof, was largely open on 3 sides. The buildings in this appeal are both enclosed on at least 3 sides. Whilst they do contain large openings, these openings are commensurate with their agricultural use. The walls, roofs and structural framework of the appeal buildings are far more substantial than what is suggested was present in the Hibbitt case. The circumstances between these two cases are far from comparable, and I have dealt with the appeal on its own merits.
16. I am therefore satisfied that the buildings are structurally sound and would form an integral part of the conversion into a new dwelling. The building operations proposed would be reasonably necessary for the conversion and would not exceed the limitations set out in the GPDO. The majority of the works would be internal or would constitute maintenance, improvement or other alteration under S55 of the Act, not re-building or fresh build. As such, the proposal would constitute permitted development as set out under Schedule 2, Part 3, Class Q of the GPDO.

Collection of Household Waste

17. Where proposals would constitute development under Class Q, it is necessary to determine whether the prior approval of the local authority will be required as to various potential impacts of the development. In this respect there is no requirement to consider any impacts arising from the disposal of household waste. It is however necessary to consider transport and highway impacts of the development and whether the location or siting of the buildings means that the change of use to a dwelling would be impractical or undesirable.
18. The Planning Practice Guidance is clear that the permitted development right for this type of change of use recognises that many agricultural buildings will be in locations where planning permission would not normally be granted.

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

19. The site is located approximately 190 meters from the public highway and is accessed via a hard surfaced shared private access drive. There is an existing group of dwellings served by the farm track, several of which have a large, shared parking and turning area to the rear. Beyond this the private driveway narrows but is still hard surfaced.
20. I acknowledge that refuse collection vehicles would not normally access private driveways and that the future occupiers of the proposed dwelling would therefore have to pull their bins, or otherwise transport them, to the end of the drive for collection themselves or make alternative private arrangements. However, this is not unusual for residents living in rural locations and is a compromise future occupiers would have to make in choosing to live here. Given that the proposal is for a single dwelling, waste bins are now wheeled, and the access is hard surfaced for its full length, it would not be an unreasonable or impractical expectation to undertake once a week or once a fortnight. Ample space is available on the grass verge adjacent to the public highway for bins to be left on collection days, without detriment to highway safety.
21. As permission is granted by the GPDO, policies in the Framework and the development plan may only be relevant in so far as they relate to prior approval matters. As waste collection is not a prior approval matter, I do not consider the development plan policies specifically relating to this to be material to my determination of this appeal.
22. The Council refer to another Class Q appeal decision in which waste collection is considered, however, this is only in relation to highway safety matters. Building Regulation matters are subject to separate legislation and do not alter my assessment of whether the proposal complies with the requirements of Class Q.

Other Matters

23. The grant of planning permission under Article 3(1) is subject to both the provisions of the GPDO and Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017.
24. An Ecological Impact Assessment was submitted with the application which confirms the use of Barn 1 by nesting Barn Owls and by various species of Bats. An Owl box is present within the barn and a Barn Owl was sat outside of this at the time of my visit. Other birds were also flying around in both barns at the time of my visit, and although I did not see any other nests or roosts, a bat roost in Barn 1 was identified in the Ecological Report.
25. The Ecological Impact Assessment includes mitigation measures to ensure that no nesting birds or protected species are harmed during, or because of, the development. These measures, which can be conditioned, include the provision of an Owl box within the loft of Barn 1, the provision of Bat boxes within nearby trees, restrictions on site clearance, control of external lighting and the requirement to obtain an appropriate licence from Natural England.
26. Finally, my attention has been drawn to various other appeal decisions but from the information provided I cannot be sure that those cases were comparable to the appeal currently before me.

Conditions

27. The appellant should note that the GPDO requires that the development shall be completed within a period of 3 years from the date that the prior approval is granted. A number of other conditions apply to such development, including that the conversion is carried out in accordance with the details provided in the application.
28. The Council has not suggested any additional conditions, However, as European Protected Species and other wildlife are clearly present and would be affected by the development, it is necessary to impose conditions to ensure that a licence is obtained from Natural England prior to the commencement of development and to ensure that the mitigation measures recommended within the submitted Ecological Impact Assessment are complied with, in order to protect these.

Conclusion

29. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

R Bartlett

INSPECTOR