



Appeal Decision

Site visit made on 25 July 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/X1545/W/22/3308533

Gobolts Farm, Barnhall Road, Tolleshunt Knights, Essex CM9 8HA

- 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 Joe & Kim Raven against the decision of Maldon District Council.
 - The application Ref COUPA/MAL/22/00181, dated 12 April 2022, was refused by notice dated 8 August 2022.
 - The development proposed is the change of use of agricultural buildings to No.5 dwellinghouses (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the proposal from the appeal form as no description was given on the application form.
3. The application form is titled as including building operations reasonably necessary for the conversion. Although the appellants have declared on the application form that no building works or other operations are required to make the proposed change of use, it is clear from the appellants' evidence, including drawings, a structural survey and final comments, that such works are included in the proposal. I have determined the appeal on this basis.
4. The Council's refusal reason is confined to Barn B, and it considers that insufficient information has been provided in respect of the level of works required for Barn B to be made habitable. In particular, the Council considers that repairing damage and holes within the roof and walls of the building would go beyond repair and replacement. I have formulated my main issue on this basis and for consistency all references to 'the building' in this decision are to Barn B.

Main Issues

5. The main issues are:
 - Whether or not the proposed development would constitute permitted development under Article 3(1), Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), with particular regard to the extent of the proposed building operations to Barn B.

- If the proposal is permitted development, whether prior approval is required as to the matters listed under the condition in Paragraph Q.2.(1) of Class Q of the GPDO.

Reasons

6. Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) and any building operations reasonably necessary to convert the building. Paragraph Q.1.(i) of Class Q of the GPDO restricts building operations to the installation or replacement of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse.
7. The Planning Practice Guidance (Paragraph: 105 Reference ID: 13-105-20180615) advises that the Class Q permitted development right assumes that the agricultural building is capable of functioning as a dwellinghouse. The right 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. 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.
8. As such, 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. Whether or not the existing building is suitable for conversion is a matter of planning judgment in each case, based on a fact and degree assessment.
9. The appellant has referred me to the caselaw in *Hibbitt v SSCLG & Rushcliffe Borough Council* [2016] EWHC 2853 (Admin), which related to the difference between a conversion and a rebuild/fresh build under Class Q of the GPDO. *Hibbitt* established that a building must be capable of conversion to a residential use without building operations that were so extensive as to amount to complete or substantial rebuilding. Whilst the *Hibbitt* case is materially different to the appeal case before me, the principles relating to the difference between conversion and rebuild are relevant.
10. The appeal building is a substantial structure which comprises of a timber frame set on a brick plinth with a slate covered timber roof. The flooring material, although hard, was unidentifiable, and set within it are steel uprights supporting the timber framed structure. The many large trees and shrubs growing very close to the north, south and west facing walls of the building obscures large parts of building's exterior and prevented a closer inspection. However, it could be seen that the external surfaces of the walls are finished in cement render.
11. The structural report submitted by the appellant identifies that the building has remained straight and upright for its lifetime. It states that the superstructure is in a good structural condition and is suitable for conversion to a residential use without the need for re-building. The main external load-bearing elements are currently functioning as required and are suitable for conversion to residential use providing that a small number of repairs are carried out.

The roof rafters are of sufficient size and strength to support the additional weight of the insulation and internal linings of the roof. The damage to the roof timbers and the decay to the walls amounting to relatively small areas would be repaired. Following my inspection of the building, which was largely limited to the building's interior, I find no reason to doubt the main findings of the structural report.

12. However, the structural survey reveals there is uncertainty over the adequacy of the building's foundations as none of the plinth wall at founding level had been exposed at the time of the survey (nor was it during my visit). As such, the evidence suggests that based on a building of its age and type it is not expected to have formal foundations, rather it is likely to have brickwork which extends a further 2 or 3 courses into the ground. The survey notes that the brick plinth displays cracking, which may have been caused by foundation movement due to nearby trees and soil conditions. To limit movement and stabilise the building, the recommendation is for either new underpinning, a pile supported slab covering the whole footprint of the building or reinforced concrete raft. Details of these, including the nature and extent of the necessary underpinning, are not provided within the survey.
13. In these respects, the appellants' structural survey casts reasonable and serious doubt on whether or not the building's existing foundations are currently strong enough to enable the building to be used as a dwellinghouse. The appellants' description of the methodology for underpinning indicates a potentially extensive building operation to support the existing building, involving successive stages of excavation to a suitable depth, filling the excavation with concrete to form a 'pin', and packing mortar between the new and old foundations to enable it to be used as a dwelling.
14. The PPG paragraph referred to above states that internal works are not generally development and that for the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q of the GPDO.
15. However, new foundations are not listed in the permitted operations in Paragraph Q.1.(i) of Class Q of the GPDO. Authoritative evidence on the nature and extent of the potential underpinning is absent from the appeal submissions. Therefore, I am not satisfied that underpinning, leading to the creation of new foundations, would consist of internal alterations for the 'maintenance, improvement or other alteration' of the building, and be exempt from the definition of 'development' under Section 55(2)(a) of The Town and Country Planning Act 1990.
16. Having regard to the evidence before me and given the potential scale and extent of the underpinning works, I am not satisfied that the existing building is already structurally sound and suitable for conversion to a dwellinghouse. It follows therefore, that the proposal cannot reasonably be described as the conversion of the existing building given the extent of potential works required to enable it to be occupied as a habitable dwelling as proposed, and it does not fall within the terms of Paragraph Q.1.(i) of Class Q of the GPDO. Consequently, on the basis of the evidence before me, I find that it does not benefit from planning permission under Class Q of the GPDO. That the Council

did not seek its own structural survey of the building by a suitably qualified person does not alter my findings on this matter.

17. Aside from the structural integrity of the building, a particular concern raised is with regard to the extent of demolition and rebuilding of the western elevation of the building to accommodate a new wall and door opening. The Council considers that this would go beyond that reasonably necessary to function as a dwellinghouse, amounting to a building operation not permitted by Paragraph Q.1.(i) of the GPDO.
18. The appellant's proposals for the conversion of the building are not supported by a detailed method statement or annotated drawings identifying the full extent of the proposed works to facilitate the proposed conversion and the existing building fabric that would be retained. Notwithstanding this, it is clear from the drawings that the west elevation of the building, which is partly enclosed by corrugated steel sheeting with visible damage to the walls on either side, amounts to a relatively limited area of the building's exterior walls. On this basis, the building operations comprised in the rebuilding of the west facing elevation would likely be limited in scale and extent. I consider that the proposed rebuilding of the west elevation would be reasonably necessary for the building to be weather tight and enclosed so as to function as a dwellinghouse and therefore complies with Paragraph Q.1.(i) of Class Q of the GPDO, which permits the installation or replacement of exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse.
19. However, this does not alter my conclusion that the evidence before me does not demonstrate that the existing building is structurally sound and suitable for conversion, given the insufficient information on the extent of works required to provide suitable foundations for the building to be occupied as a habitable dwelling. Therefore, when taken together, I find that the potential nature and extent of the building operations involved would, as a matter of fact and degree, fall outside those described in Class Q.1.(i) of the GPDO and thus amount to a rebuild or fresh build of the structure. The proposal would not therefore amount to the conversion of the existing building.
20. Consequently, I conclude that the proposal would not constitute permitted development as set out under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO, with particular regard to the extent of the proposed building operations to Barn B.
21. Having found that the proposal would not be permitted development, it is not necessary for me to consider the prior approval matters listed under the condition in Paragraph Q.2.(1) of Class Q of the GPDO, or the submitted Unilateral Undertaking obligating the landowners make a financial contribution to delivering mitigation against recreational disturbance to the nature conservation interests of the relevant designated European habitats sites.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR