



Appeal Decision

Site visit made on 22 August 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Appeal Ref: APP/W1850/W/22/3298473

Land off Sterrys Lane, Gorsley, Linton, Herefordshire HR9 7AH

- 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), 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 Andrew Hooper against the decision of Herefordshire Council.
 - The application Ref 220417, dated 8 February 2022, was refused by notice dated 4 April 2022.
 - The development is prior approval for a proposed change of use of agricultural building to form 1 smaller dwellinghouse (Class C3) and for building operations reasonably necessary for the conversion.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development above is taken from the Council's decision notice, rather than the generic description at the top of the application form. The appellant has used the Council's description on the appeal form.

Procedural Matters

3. The proposal falls to be determined under Class Q(b) of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter the 'GPDO'). This permits 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, together with building operations reasonably necessary to convert the building to a dwellinghouse.
4. Under Class Q, a determination must first take place as to whether the proposal constitutes permitted development. Paragraph Q.1(a)–(m) sets out what is not permitted development. In the event development is permitted, paragraph Q.2(1) sets out a number of conditions and requires the Council to assess the proposal against a number of prior approval matters (a) to (g).

Main Issues

5. The main issues in this appeal are:
 - Whether the proposed building operations would exceed what is reasonably necessary to convert the building into a dwellinghouse for it to benefit from permitted development rights;

- Whether the appeal building was within an agricultural use on the date necessary for it to benefit from permitted development rights; and
- If found to be permitted development, whether prior approval is required with regard to the transport and highways impacts of the development so as to comply with Paragraph Q.2(1)(a) of the GPDO.

Reasons

Whether building operations are reasonably necessary

6. Some building operations are allowed in order to convert agricultural buildings into dwellings, as part of a Class Q.(b) prior approval. However, limitations to the 'operations reasonably necessary' are set out in paragraph Q.1(i). Development is not permitted if it would consist of building operations other than the installation or replacement of (i)(aa) windows, doors, roofs or exterior walls, and (bb) water, drainage, electricity, gas or other services, to the extent necessary for the building to function as a dwellinghouse, and (ii) partial demolition to the extent reasonably necessary to carry out these building operations.
7. However, there is nothing to specify or indicate the extent of the aforementioned works, such as how much of the walls or roof can be replaced or installed, or even imply that they can all be replaced in their entirety for the purposes of a conversion.
8. The Planning Policy Guidance (the 'PPG') provides some clarification¹ on the interpretation of Class Q. It recognises that for a building to function as a dwellinghouse some building operations will be necessary and some works are permitted. However, at the outset the permitted right assumes that the agricultural building is capable of functioning as a dwelling, but 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. Furthermore, it was held in the *Hibbitt*² High Court Judgement that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. The judgement remains relevant and makes clear the building operations should not be so extensive as to amount to a 'fresh build'. Therefore, whether building works are reasonably necessary is a planning judgement based on the existing building, the scope and extent of the proposed building operations and the facts of the case.
10. The existing building is a rudimentary steel framed Dutch barn with a curved roof. The south elevation facing into the field is partially clad with the lower part of the building left open and the north elevation is completely open, such that the building's metal frame is clearly visible, and the building is not fully enclosed. The metal frame supports a lightweight and utilitarian form of corrugated metal cladding for the rest of the structure. The cladding on the elevations was secured to the metal frame as well as to slender horizontal

¹ Paragraph 105 ref ID: 13-105-20180615

² *Hibbitt and another v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

timber rails. However, the cladding did not meet or join with the concrete floor. The roof was clad in corrugated sheeting and appeared to be intact and I saw there were also guttering and downpipes.

11. From my observations on site, I found the internal metal frame to be in relatively good order. This is reinforced by the appellant's brief structural survey³. This concludes that the structure is capable of taking its self-weight and any imposed loads and that the steel columns supporting the roof truss and eaves trusses are sufficient to carry the roof load with extra insulation and any services. If a first floor were added the structural survey finds that the columns could still take the load. The foundations were not exposed, but the structural survey assumed they would be standard concrete foundations for such a steel frame agricultural building. Overall, the survey found the existing steel sections would be capable of taking the proposed loads without the need for strengthening.
12. It is clear from the *Hibbitt* judgement that the wording of PPG paragraph 105 has since been revised. The current wording of paragraph 105⁴ of the PPG no longer includes references to the existing building needing to be structurally strong enough to take the loading which comes with the external works to provide for residential use for the building to be considered to have permitted development rights. Therefore, the fact that the steel structure of the appeal building has appropriate structural integrity or that no new structural members would be required is not, therefore, in itself determinative. The issue here is whether the existing building is suitable for conversion and whether the proposed building operations would amount to more than is reasonably necessary to convert the building to a dwellinghouse.
13. I saw that parts of the existing metal sheeting were missing or damaged. These would need to be replaced and repaired. Furthermore, the entire north elevation and the lower half of the south elevation would need to be enclosed and clad. The cladding would also need to connect with the concrete floor to become a fully enclosed building. I therefore find the existing building is not fully enclosed or indeed complete. Building operations would need to include installing new external walls to a substantial part of the building and its exposed skeletal steel frame.
14. Some of the submitted plans have been annotated. The existing corrugated sheeting on the roof would be retained and the east elevation cladding would be repaired where necessary. However, there is no annotation to suggest that the existing partial cladding on the south elevation would be retained and only new cladding added to the lower part of the elevation. This indicates to me that the entire south elevation would be reclad, which would involve taking this elevation back to the skeletal frame of the building. The entire north elevation would also need to be clad as it is currently open. Whilst the prior approval process as a 'light touch' there is little substantive evidence provided to describe the extent of the works that would be required. Whilst replacement of exterior walls is permitted, I find the extent of new exterior wall cladding to more than one elevation of a partially open existing building would be

³ Prepared by John Cranna 21 May 2021

⁴ PPG Paragraph 105 revision date - 15 June 2018

substantial. This further indicates to me that the existing building is not capable of conversion without substantial re-building.

15. In addition, as the building has no openings (apart from the fully open and partially open north and south elevations), all proposed door and window openings would be new. The GPDO does allow new doors and windows to be installed, but their amount and extent is part of the planning judgment. Most of the corrugated sheeting on the west elevation would be replaced by 4 large panels of full height glazing at ground and first floor level, with zinc cladding between the 4 windows panels. This effectively removes most of the in-tact corrugated sheet cladding from the west elevation. The remaining proposed door and window openings are modest openings, albeit with a domestic rather than agricultural form and pattern.
16. To conclude, it was evident on my visit that the existing building is semi-open with the steel metal frame clearly visible, such that the building is not, in my view, suitable for conversion without substantial rebuilding. As a matter of planning judgement, and based on what I saw and on the evidence before me, the significant extent of new walls required, some uncertainty about the foundations and substantial building operations required to convert the building would go beyond what would be reasonably necessary for the building to function as a dwelling and be described as a conversion. Accordingly, the building operations fall outside the scope of permitted development rights under Class Q.1(i) of the GPDO and the proposal would not be permitted development.

Other Matters

17. As I have found the proposed development would not be permitted development under Q.1(i) there is no need for me to consider further the matter of whether the development is permitted development under Q.1(a) relating to agricultural use. Failure of one is sufficient to confirm the development is not permitted. Even if I were to find the building was in agricultural use on the necessary date, I would still reach the same conclusion in relation to building operations, as described above.
18. As the development is not permitted, a Class Q prior approval application cannot be determined on it and hence there is no need for me to determine whether prior approval would be required as to transport and highways impacts.

Conclusion

19. For the reasons given above I conclude the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore dismissed.

K. Stephens
INSPECTOR