
Appeal Decision

Site visit made on 14 November 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/L3815/W/22/3312061

Butskiln, Street End Road, Sidlesham, West Sussex PO20 7QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr R Goldsmith against the decision of Chichester District Council.
 - The application Ref SI/22/01038/PA3Q, dated 8 April 2022, was refused by notice dated 13 July 2022.
 - The development proposed is change of use of agricultural building to form one no. residential dwelling (Use Class C3) and associated operational development.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Schedule 2, Part 3, Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015¹ (GPDO) sets out the prior approval process. It states² that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval.

Main Issues

3. The main issues are:
 - Whether the proposal would be permitted development (PD) under Schedule 2, Part 3, Class Q³ of the GPDO; and
 - If so, whether or not prior approval would be required in accordance with the condition set out in Paragraph Q.2 (1) of the GPDO.

Reasons

Whether the proposal would be permitted development

¹ SI 2015 No.596

² Paragraph W.(3)

³ SI 2018 No.343

4. Class Q permits development consisting of (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) or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use. The appeal relates to development under both Q(a) and Q(b), so that the proposal relates to the change of use to residential as well as associated facilitating works.
5. Paragraph Q.1 (i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations 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 to the extent reasonably necessary to carry out building operations allowed by Paragraph Q.1(i)(i).
6. Paragraph 105 of the Planning Practice Guidance⁴ (PPG) provides further clarification. The guidance states 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 into 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 PD right. The PPG also acknowledges that internal works are generally not development and that for the building to function as a dwelling it may be appropriate to carry out internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floorspace permitted, or internal walls, which are not prohibited by Class Q.
7. The building is a single storey agricultural building which was built around the late 1930s/1940s as part of the Land Settlement Association (LSA) development in Sidlesham. It was formerly used as a piggery and is now used for agricultural storage.
8. The building comprises a 3-bay timber frame construction, incorporating a pitched roof with timber trusses, rafters and purlins, which is clad in corrugated cement-based sheeting. Between the principal timber wall posts, the external walls comprise block construction up to cill height. There are 3 window openings in each of the side walls, between which, the external walls are infilled with a mix of block construction, hardboard panels and black polythene sheeting. There are timber sliding double doors on the front elevation and a single timber door on the rear of the building. Windows run across the remainder of these gable ended walls, with hardboard cladding in the sections above the top of the windows. The whole of the ground under the building is laid to concrete slab.
9. The proposal would create a single storey one-bedroom dwelling, with open plan living, kitchen and dining room. It would have a floor area of less than 100 square metres, comprising a “smaller dwellinghouse” under Paragraph Q.3 of the GPDO.
10. I have noted that the appellant’s supporting Structural Reports by Archibald Shaw dated 4 April 2022 and 17 October 2022 (the Structural Reports) conclude that, from a structural perspective, the building is suitable for the

⁴ Reference ID: 13-105-20180615

proposal. The Structural Reports confirm that the overall settlement performance of the building as judged by line and level is adequate, the structural integrity of the building would not be compromised by the proposed alterations to the elevations, and the building is capable of functioning as a dwelling without requiring significant remedial works or additional/replacement structural elements.

11. However, the ability of the existing structure to bear the load of the proposed development is not, in and of itself, sufficient to meet the requirements of Class Q.
12. Class Q allows for building operations altering external appearance, as well as internal alterations. However, in order to benefit from the PD rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must only involve building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i).
13. The building is likely to require an extensive amount of works to facilitate the creation of the proposed dwelling. These include: re-cladding of external walls with a lightweight cladding; infilling of a door opening on the east elevation; insertion of new door on the south elevation to replace an existing window; additional window openings; replacement of a missing section of blockwork in one wall, which, following tree damage, has been temporarily infilled with black plastic sheeting attached to new timber battens; replacement of hardboard cladding on gable end walls; insertion of new vertical framing members tied to the adjacent block work; installation of new internal skin within the external walls for insulation; and introduction of new internal stud partition walls.
14. Moreover, the Council has drawn my attention to evidence that several elements of the existing structure are subject to disrepair and decay, including rot within parts of the timber frame. The concrete floor also appears to be in a poor condition, showing signs of dampness, cracking and patching. Also, notwithstanding that an existing small hole in the roof is a result of tree damage, the general condition of the roof cement sheeting also appears to be poor.
15. Works to these elements of the building are not specifically detailed in the appellant's proposed conversion works. However, having regard to what I saw during my site visit, and taking a pragmatic approach, I have no substantive reason to disagree with the Council's view that repair and/or replacement works to the disintegrating parts of the timber supports, roof and floor of the building would be reasonably likely to be required as part of the proposed residential conversion. Moreover, I note that, there is mention in the Structural Reports of overhaul to the roof in connection with the proposed retention of the existing roof sheeting.
16. Having regard to the above, whilst individually the proposed works would fall within the definitions included within Paragraph Q.1 (i), from the evidence before me, it seems that, taken cumulatively, they are likely to result in only a very little of the existing building structure remaining unaltered. In this respect, I find that the amount of building work required for the building to function as a dwelling is such that the proposal relies very little upon the existing building.

17. As such, having regard to the High Court judgement in the *Hibbitt* case⁵ and the associated appeal decision⁶, which are referred to in Paragraph 105 of the PPG, these works would exceed what could reasonably be described as conversion, and would be so extensive as to comprise substantial re-building of the existing structure. This goes beyond what is reasonably necessary for the conversion of the building into residential use.
18. The appellant has drawn my attention to a scheme for the residential conversion of a former piggery building at 15 Chalk lane, Sidlesham, which the Council considered to be suitable under the prior approval process. I have not been provided with the full details of this case, such as to enable me to make a direct comparison with the appeal scheme. As such, and as each case must be considered on its own merits, I am unable to afford that particular case significant weight in my decision so as to enable me to reach an alternative conclusion.
19. For the above reasons, I therefore conclude that, based on the evidence before me, and my own observations of the building, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q.

Prior approval

20. Given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required, as it would not alter the outcome of the appeal.

Other Matters

21. The Council's third reason for refusal relates to the location of the appeal site within the zones of influence of Pagham Harbour and Chichester and Langstone Harbours Special Protection Areas (SPAs), which are internationally designated sites of nature conservation importance, with special reference to birds. As such, the appeal scheme, comprising an additional residential unit, is likely to have a significant effect in combination with other plans and projects on the SPAs through increased recreational pressure.
22. The appellant has addressed this reason for refusal as part of its appeal submissions by means of a signed Unilateral Undertaking securing a mitigation contribution.
23. Article 3(1) of the GPDO grants planning permission for the classes of development described as PD in Schedule 2, subject to Regulations 75 - 78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017, that development which, (a) is likely to have a significant effect on a European site or a European offshore marine site, alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site,

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

⁶ APP/P3040/W/16/3142052 - Dismissed - 19 May 2016

must not be begun until the developer has received written notification of the approval of the LPA under Regulation 77.

24. The Regulation 77 application may be submitted and approved after prior approval is given for the development, and would be for the LPA to determine, outside the scope of the prior approval process. As such, and having regard to my findings on the first main issue, there is no need for me to consider the implications of the proposal on the SPAs.

Conclusion

25. For the reasons given, and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance and cannot be addressed through prior approval provisions set out under paragraph Q.2(1) of the GPDO.
26. The appeal is, therefore, dismissed.

S Leonard

INSPECTOR