



Appeal Decision

Site visit made on 4 December 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Appeal Ref: APP/L1765/W/23/3317283

The Greenhouse, Gravel Hill, Shirrell Heath, Hampshire, SO32 2JQ

- 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 & Country (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Graham Snape and Heather Woods against the decision of Winchester City Council.
 - The application Ref 22/02538/PNACOU, dated 3 November 2022, was refused by notice dated 22 December 2022.
 - The development is described on the application form as "the dwelling proposed will be sited within the existing glasshouse, to the west of Gravel Hill, as shown on the submitted plans and described in the Planning Statement."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Schedule 2 Part 3 Class Q(b) of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO) planning permission is granted for the change of use of an agricultural building and any land within its curtilage to a use within Class 3 dwelling houses together with building operations reasonably necessary to convert the building (permitted development). A prior approval application can be refused where the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposal complies with, the relevant conditions, limitations or restrictions.
3. Horticulture is included in the definition of agriculture in s336 of the Town and Country Planning Act 1990 (as amended) (the Act). Appeal Decisions¹ and the subject Enforcement Notice establish that the last lawful use prior to 2013 was horticulture. The main Parties consider that on this basis the glasshouse should be considered as an agricultural building for the purposes of Class Q. I return to this matter below.

Main Issues

4. The Council considers that it had not been demonstrated that the glasshouse is capable of functioning as a dwelling without works that are not permitted under Class Q. On this basis the main issues are whether the proposal would

¹ APP/L1765/C/20/3261886 and 3261887

be permitted development under Schedule 2, Part 3, Class Q of the GPDO; and if so, whether prior approval should be granted for the proposed development.

Reasons

5. The appeal site is situated next to the holiday home known as The Greenhouse. It includes about four fifths of the commercial sized glasshouse which is a frame of tied trusses and glazing bars with some glazed sections replaced by timber panels/open steel mesh panels. Parts of the timber panels are missing, there are open knot holes and the timber is damp. Much of the glazing is missing and the section where most roof glazing appears to be present is excluded from the appeal site. Where present the glass appears to be typical non-laminated 3mm horticultural glass with traditional glazing wing clips offering little to no structural restraint or longitudinal stability. Spare glass is stored on site. A perimeter masonry upstand, which appears to vary in thickness and shows signs of cracking, supports the frame and the primary columns have been concreted into the sub-strata. Internally there appears to be one small concrete slab towards the southern end but mostly the "floor" is lush grass. Miscellaneous items are stored within the frame.
6. Works to address the minor ridge deflection and frame distortion, missing or unfixed roof members, runners and glazing bars as identified in a visual structural review in August 2022 have been carried out. The October 2022 visual inspection concluded that the frame would now be able to support its original 3mm glazing and provide a stable structure. It did not go on to address whether it could be satisfactorily converted into residential accommodation. To be weatherproof the external shell would require extensive replacement of the glass panes, sealing and the upgrading of the timber panels.
7. As described by the appellants the proposed dwelling would be free standing within the existing shell. There would be new walls, doors, floor, ceiling and all necessary services would have to be installed. The walls would not be hung from or supported by the frame. The space between the new structure and the frame would provide additional flexible accommodation and provide heat and ventilation with the glasshouse shell providing all the protection from the elements including wind and rain. The appellants consider that the works necessary to create a dwelling would either comprise internal works that are not development or building operations allowed under Paragraph Q.1.(i)(i).
8. Various suggestions for the internal shell have been provided including use of timber studwork insulated internally and with a plasterboard finish; internally insulated painted OSB boarding externally; or 150mm thick preconstructed SIPs panels with a similar finish inside and out. The external face will be painted boarding. In the absence of more precise details, I cannot confidently conclude that, even were all the missing glass and timber panels to be replaced, that the resultant structure would be a sufficiently weatherproof shell so as to enable only "internal style" walls, floors and ceilings.
9. A wholly new complete floor with appropriate foundations DPC and insulation would be required to support the "internal shell". This goes well beyond bringing the floor of an agricultural building up to modern insulation standards by, for example, the laying of screed and damp-proof course/ insulation on an existing concrete base.

10. The Hibbitt judgement and the Planning Practice Guidance (the PPG) confirm that works that would be so fundamental as to effectively result in a rebuilding or fresh build are not permitted. 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: 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 proposals comprise conversion rather than rebuild or fresh build require a judgement of the facts and degree of the case.
11. Section 55(2)(a) of the Act applies to works of 'maintenance, improvement or other alteration which affect only the interior...or do not materially affect the external appearance of the building'. However, case law indicates that there is a difference between 'maintenance' and rebuilding. Installing foundations is not one of the building operations specifically allowed for at Class Q.1.(i)(i)(aa) or (bb) and under s56 of the Act is a material operation which indicates the commencement of development. Development under Class Q is not permitted if it would consist of building operations other than 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. Paragraph Q.1.(i)(ii) allows for associated partial demolition.
12. In my judgement the glasshouse as it stands is not capable of functioning as a dwelling without substantial works. If a building is capable of use as a dwelling, it is likely that the works to facilitate the change of use would be considered reasonably necessary. However, the nature of those works would still need to fall within the operations permitted. I acknowledge that substantial works could fall under its scope but Class Q presupposes that the works comprise "conversion".
13. Taking all the above together as a matter of fact and degree I conclude that the total extent of works required go well beyond what might sensibly or reasonably be described as a conversion. The development would in all practical terms amount to fresh build, with only a modest amount of help from the original agricultural building.
14. I conclude that the works needed to create a dwelling from the glasshouse would not fall within the scope of that permissible under Part Q.1 (i)(i) and (ii) and some of the operations comprise development. Taken in the round the proposal would not be permitted development under Class Q. It is therefore not necessary or appropriate for me to consider whether prior approval should have been granted.

Other Matters

15. Third Parties contend that the glasshouse and adjoining land was not used solely for agricultural use on the qualifying date of 20th March 2013. Appendix 6 to the appellant's Planning Statement says that comments that the wider site, including other land as well as the current appeal site, has not been used for agriculture for many years, are broadly correct.
16. The tests in relation to the conditions, limitations or restrictions of permitted development rights differ from those in enforcement proceedings and, should an agricultural use cease since the relevant date and then be resumed, the

agricultural use would have to be carried out for a period of at least ten years before the permitted development rights would apply.

17. For the above reasons I cannot confidently conclude for the purposes of this prior approval appeal that the greenhouse was solely in agricultural use as part of an established agricultural unit on the requisite date and therefore whether the criteria under Class Q.1.(a) is met. Had my conclusion on the first main issue been otherwise I would have sought more information on this matter.
18. I am not privy to all the information that was available to a colleague Inspector who concluded for appeal Ref APP/W3330/W/21/3268761 that the building operations at that commercial greenhouse would be such as to be reasonably necessary for the building to function as a dwellinghouse and would comply with requirements of paragraph Q.1(i) of the GPDO. There are similarities including the construction of internal ceiling and walls set back from the external glazed sides of the existing structure with conservatories and other covered areas in the intervening spaces which would also provide heating and ventilation.
19. However, that case differs from the proposal before me in that the accompanying Structural Engineers Report found that the frame, blockwork walls, glazed panels were in a sound structural condition and were on a solid concrete floor slab. The Report found the greenhouse could be satisfactorily converted into residential accommodation as the new walls would be constructed off the existing floor slab and only some repairs would have to be carried out to the external cladding and low-level walls. Consequently, that case does not lead me to any different conclusions.
20. I understand that there is animosity between the appellants and the previous owner of the site. The appeal proposal is the second application for prior approval. Neither matter is pertinent to my conclusion on the main issue.

Conclusion

21. For the reasons set out above I conclude the appeal should be dismissed.

S Harley

INSPECTOR