



Appeal Decision

Site visit made on 1 November 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/L3245/X/22/3310284

Barn south of Hilltop Farm, Hampton Wood, Ellesmere SY12 0NN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Mayer against the decision of Shropshire Council.
 - The application ref 22/01295/CPL, dated 15 March 2022, was refused by notice dated 6 September 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed conversion and change of use of existing agricultural building to residential use under Class Q of the GPDO.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Application for costs

2. An application for costs was made by Mr Richard Mayer against Shropshire Council. This application is the subject of a separate decision.

Procedural Matters and Background

3. The description of the proposed development has been taken from the Council's decision notice as I consider it provides an accurate description. Accordingly, I shall use this for the purposes of determining this appeal.
4. In December 2018 an application¹ under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ("the GPDO") was submitted to the Council for the change of use of the appeal building from agricultural to residential use. An appeal² was subsequently made against the Council's failure to determine the application within the prescribed period, with that appeal being allowed in October 2019.
5. However, as the appeal related to the Council's failure to make a determination on the prior approval application within the prescribed period, whether or not the proposal actually amounted to permitted development was not a matter for the appointed Inspector to consider.

¹ Council Ref: 18/05730/PMBPA

² APP/L3245/W/19/3232168

6. In order to establish whether the proposed development was lawful under Schedule 2, Part 3, Class Q of the GPDO, an application³ for a certificate of lawful use or development (LDC) was submitted to the Council in April 2020. This application was refused in June 2020 and a subsequent appeal⁴ dismissed in January 2021 ("the 2021 appeal").
7. The Inspector concluded in the 2021 appeal that the building was not capable of functioning as a dwelling without substantial construction works, and that the proposed works would extend beyond building operations reasonably necessary to convert the building to residential use. Consequently, it was considered that the proposal was essentially a 'fresh build' within the parameters of a pre-existing structure.
8. This appeal arises following a further application for a LDC which was refused by the Council, the details of which are contained in the banner header above. The proposed development subject of this appeal includes alterations from the previous proposal which the appellant considers will overcome the issues raised by the Inspector in the 2021 appeal decision. This appeal will be determined upon its own merits and the onus of proof lies with the appellant, with the relevant test on the balance of probabilities.

Main Issue

9. The main issue is therefore whether the Council's decision to refuse to grant a LDC for the proposed conversion and change of use of the existing agricultural building to residential use was well-founded. This turns on whether the proposed works are in excess of those considered reasonably necessary to facilitate the conversion under Article 3(1), Schedule 2, Part 3, Class Q of the GPDO.

Reasons

10. The building is a modern, rectangular steel framed building. It is clad with profiled sheeting on its roof and walls and has a single large steel framed door opening on its southern elevation. The whole building is on a solid concrete floor slab. Internally, the building has no internal sub-divisions, with the steel frame along with timber purlins and side rails exposed.
11. Class Q(a) of Schedule 2, Part 3 of the GPDO permits development consisting of 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), and, under Class Q(b), building operations reasonably necessary to convert the building for that purpose. This is subject to certain limitations, paragraph Q.1, and conditions, paragraph Q.2.
12. Under paragraph Q.1(i) of the GPDO, development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or external walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.
13. The Council's case is that the building is not suitable for conversion to residential use and that the works proposed would exceed what could be

³ Council Ref: 20/01421/CPL

⁴ APP/L3245/X/20/3256290

considered 'reasonably necessary' for the conversion. In support of this position the Council specifically refers to the High Court's judgement in *Hibbitt*⁵ and paragraph 105 of the Planning Practice Guidance (PPG).

14. In *Hibbitt* it was established that for permitted development rights to be engaged under Class Q, the building must be capable of conversion without complete or substantial re-building or, in effect, the creation of a new building. Although *Hibbitt* concerned an open-sided metal framed agricultural building, that case established that it is necessary to assess the extent of the works and decide whether they fall within or go beyond the statutory limits. Advice in paragraph 105 of the PPG largely reiterates this position, whilst also advising that internal works are not generally development. This may include internal structural works, such as internal walls, which are not prohibited by Class Q.
15. Unlike in the case of *Hibbitt*, the building subject of this appeal is fully enclosed and cannot be described as a skeletal structure. The proposed development would see the exterior walls remain largely unaltered, save for the creation of a limited number of new openings, and the roof would be retained in its entirety. The works to create the new openings are without doubt reasonably necessary to convert the building to residential use, and therefore are expressly permitted under Class Q.1(i) of the GPDO.
16. The proposed internal works include wall and roof insulation being fixed directly to the existing cladding, the existing floor slab being insulated from above with screed on top, and the installation of internal partitioning walls. The works will utilise the existing building and foundations, with no evidence to suggest that they will include any additional structural elements or go beyond what is necessary to facilitate the conversion of the building and to ensure that it is suitable for human habitation.
17. As part of the application the appellant provided a structural report. The report stated, inter alia, that the building has adequate strength as it exists, and for the proposed works. It further stated that the additional loading from the proposed works would make the building stronger without compromising the adequacy of the foundations or floor slab.
18. Whilst accepting that the steel portal frame is structurally acceptable, the Council considers that the building's skin is inadequate to provide for a residential conversion, and that the installation of the new openings would substantially weaken the structural integrity of the building and lead to additional loading. Though the Council states that its Building Control team were consulted on the proposals, I find there is no evidence to cast doubt on the findings of the submitted structural report which was prepared by a suitably qualified professional.
19. I therefore find that the existing building is capable of conversion to a residential dwelling, and that the relatively modest works proposed are reasonably necessary to facilitate that conversion. Furthermore, the proposed works fall significantly short of constituting complete or substantial re-building, or in effect, creation of a new building. Overall, the details submitted indicate on the balance of probability that the conversion would satisfy the conditions and limitations of Class Q of Part 3 of Schedule 2 of the GPDO.

⁵ *Hibbitt & Another v SSCLG and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin)

Other Matters

20. The Council has referred in its submissions to policies contained within its 'Core Strategy' and 'Site Allocations and Management of Development Plan', as well as the 'Shropshire Local Development Framework -Type and Affordability of Housing Supplementary Planning Document'. However, compliance with local planning policies can have no bearing on the determination of this appeal, which is confined to the narrow issue of deciding whether or not the proposed development would be lawful if begun on the date of the LDC application. Similarly, although in its appeal statement the Council has provided two 'suggested conditions' they would wish to see imposed, planning conditions cannot be imposed on a LDC.
21. One third party representation has been received from the occupier of a neighbouring property raising concerns about the proposed residential use of the building. These concerns primarily relate to the potential impact of the proposal on their living conditions, with particular regard to privacy. The planning merits of the matters applied for however do not fall to be considered, with the decision based strictly on factual evidence and the application of relevant law and judicial authority in determining the lawfulness of the proposed development.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 15 March 2022 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would satisfy the conditions and limitations of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and would therefore be permitted development.

Signed

David Jones

Inspector

Date: 14 December 2023

Reference: APP/L3245/X/22/3310284

First Schedule

Conversion and change of use of existing agricultural building to residential use under Class Q of the GPDO

Second Schedule

Land at: Barn south of Hilltop Farm, Hampton Wood, Ellesmere SY12 0NN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the development described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 December 2023

by David Jones BSc (Hons) MPlan MRTPI

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Scale: Not to Scale

