



Appeal Decision

Site visit made on 5 December 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 December 2023

Appeal Ref: APP/J1860/W/23/3322722

Barn at Mill Orchards, Stourport Road, Great Witley, Worcester WR6 6JP

- 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 Mill Orchards against the decision of Malvern Hills District Council.
 - The application Ref M/22/01543/GPDQ, dated 17 October 2022, was refused by notice dated 13 December 2022.
 - The development proposed is Prior Approval for the proposed change of use of an agricultural building to one dwellinghouse and for building operations reasonably necessary for the conversion.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the appeal the National Planning Policy Framework (the Framework) was revised on 19 December 2023. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party.
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 from the criteria in paragraph Q.1(a)–(m). 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).
5. Paragraph W(10) of the GPDO requires that account must be taken of any representations received and regard must be had to the Framework so far as relevant to the subject matter of the prior approval.

Main Issues

6. The main issues in this appeal are:

- Whether the proposal would be permitted development with particular regard as to whether the building operations would be reasonably necessary to convert the building into a dwellinghouse under Paragraph Q.1(i) of the GPDO, and
- If so, whether prior approval would be required with regard to the design or external appearance of the development so as to comply with Paragraph Q.2(1)(f) of the GPDO.

Reasons

Whether building operations are reasonably necessary

7. Class Q.(b) of the GPDO permits some building operations in order to convert agricultural buildings into dwellings. Paragraph Q.1(i) sets out the limitations on the building operations that can be undertaken to convert the building. 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 above building operations.
8. The Planning Practice Guidance (the 'PPG') provides further clarification¹ on the interpretation of Class Q. At the outset the permitted right assumes that the agricultural building is capable of functioning as a dwelling, and hence 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. It is unlikely that many existing agricultural buildings are suitable for habitation as they stand without the introduction of insulation, dividing walls, heating and so on to meet regulatory standards to make them suitable for human habitation. The PPG 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 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.
10. The existing building is a modest sized steel portal framed structure with internal horizontal timber beams and a solid concrete slab floor. On three sides there is a blockwork dwarf wall approximately 1.35m high, with corrugated metal sheeting above. However, on the north and east elevations large areas of corrugated Perspex sheeting or polycarbonate have been installed to replace sections of metal sheeting to allow light into the building, effectively acting as 'windows'. On the south elevation there is a full height roller shutter door. The roof is clad in corrugated fibre cement boards. The building has guttering and downpipes. A cylindrical metal clad silo adjacent to the building would be

¹ Paragraph 105 ref ID: 13-105-20180615

removed and does not form part of the proposal. Adjacent to the west elevation there were remnants of a previous blockwork structure with no roof and only two external walls partly intact, with fallen blockwork in a pile to the side. The proposed floor plans also indicate a "tank to be removed" - this has already been removed.

11. The proposal would create a single one-bedroom dwelling with open-plan living, kitchen and dining room, with a small utility area sectioned off. A mezzanine would be installed over half the floor area to create an upper floor bedroom. The proposed floor plans show there would be a bathroom constructed outside the main building, roughly where the partially demolished blockwork structure is located.
12. The appellant has submitted a Structural Report² (the Report) which concludes overall that the building is in very good condition, with minimal corrosion to the primarily steel frame, which I saw to generally be the case from my observations on site, which included going inside the building. The Report goes on to state that the structure would not require any structural alteration to convert it into a dwelling as the frame has adequate reserve capacity for any additional loads proposed in the conversion.
13. However, the structural integrity of the building and its ability to bear loads is not, in itself, determinative as to whether the proposal would meet the requirements of Class Q. The *Hibbitt*³ High Court Judgement ruled that the building in question 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. *Hibbitt* found that the extent of the works themselves is not dispositive, but it is for the decision-maker to assess the extent of the works and decide whether they fall within, or go beyond, the statutory limits with regards a conversion or a rebuild. 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.
14. The proposal would retain the roof, although I saw some minor repairs would be needed as one roof panel was damaged and letting in water. The blockwork walls and concrete slab floor would also be retained, as would the existing metal sheeting in situ.
15. According to the appellant's Construction Method Statement⁴ (the CMS), the transparent sheets [the Perspex panels] would need to be replaced to match the existing sheeting. In my view these are not "small areas", as described by the appellant, but make up a significant proportion of two elevations. Once the Perspex panels are removed there would be little corrugated sheeting remaining on these two elevations.
16. In addition, virtually the entire south elevation would be replaced with the removal of the roller shutter door with full height glazing up to almost the eaves, with a small area of metal sheeting remaining in the apex. With the removal of the Perspex panels and the roller shutter a significant proportion of the structural frame of the building would thus be revealed, leaving principally

² Prepared by Delta Vector Engineering dated 23 January 2022

³ *Hibbitt and another v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

⁴ Prepared by The Rural Planning Company

- a skeleton frame with a concrete floor, a roof and one intact side wall. This indicates to me the existing building is not suitable for conversion to residential use in the first instance, despite its structural integrity, and that the building operations would be of a scale and magnitude that would go beyond what was reasonably necessary for a conversion, when compared to the existing building.
17. The proposed elevations show the north, east and west elevations uniformly clad. The plans are not annotated, nor do they show the areas of replaced sheeting or the breaks in the cladding to show where the areas of Perspex were. This leads me to question whether the existing metal cladding would be removed and these elevations replaced with new cladding, potentially taking the works even further beyond what is necessary.
 18. It is also unclear from the plans about the bathroom. The existing elevations, but not the floor plans, show some structures attached to the west elevation, as I have described above. However it was evident on my visit that they did not exist in the form shown on the plans. Whilst Class Q allows some partial demolition to the extent necessary to carry out building operations, the demolition of the side structure would not be necessary to undertake the works for the main building. However, the proposed plans show the side structure would be used to create a bathroom for the dwelling. Very little of the structure remains such that it would not be capable of any conversion in its current state without substantial or complete rebuilding. This would go beyond what was reasonably necessary for a conversion.
 19. The CMS includes a section on rooflights and states these would be rectangular powder-coated aluminium frames and an elevation with rooflights is included in the CMS. However, the plans submitted with the application and appeal do not show rooflights.
 20. I consider the various ambiguities and uncertainty between the plans and the CMS regarding the large Perspex panels and extent of new cladding, roof lights and the lack of information about the state of the partially collapsed 'bathroom' structure cause me to question whether the extent of the works would be more than described.
 21. To support their respective cases, both parties have drawn my attention to a number of Class Q appeal decisions and Class Q approvals by the Council and an adjacent authority. Not all of them relate to buildings within the Council's administrative area, with some in other parts of the country such as Devon and Somerset. I do not have the full details of the cases, but from what I am able to glean the examples differ from the appeal before me in terms of the individual circumstances of the buildings in question, the matters considered by the Councils and the conversion works proposed. Hence, I am unable to make any meaningful comparisons with the appeal proposal before me. Whilst consistency in decision making is important, all decisions turn on their own particular circumstances based on the facts before each decision-maker at the time, as is evident from the submitted examples. In any event I must consider the appeal proposal on its own merits.
 22. Drawing all the above points together, whilst the building is structurally sound and individually each of the proposed works would fall within the scope of the definitions in Paragraph Q.1(i)(i), from the evidence before me and my own observations on site I find the works taken cumulatively would result in little of

the external structure remaining unaltered. I thus find the building is not suitable for conversion to a dwelling as it stands and that the amount the building work required for the building to function as a dwelling would go beyond what was reasonably necessary.

23. I therefore conclude that it has not been demonstrated that the required works would be reasonably necessary and fall within the scope of permitted development so as to comply with Paragraph Q.1(i). I therefore find the proposal does not constitute permitted development, but is development for which planning permission would be required.

Prior Approval

24. Given my conclusion that the proposal would not be permitted development under Class Q of the GPDO, it is not necessary for me to consider whether prior approval would be required with regard to design or external appearance under Paragraph Q.2(1)(f), as it would not alter the outcome of the appeal.

Conclusion

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

K. Stephens
INSPECTOR