



Appeal Decision

Site visits made on 20 December 2023 and 15 January 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/X3540/W/23/3314883

Agricultural building opposite Johnsons Farm, Kelsale Road, Kelsale-cum-Carlton

- 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 and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr D Fisher against the decision of East Suffolk Council.
 - The application Ref DC/22/2336/P3Q, dated 9 June 2022, was refused by notice dated 4 August 2022.
 - The development proposed is prior notification (agriculture) agricultural barn to residential.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development and site address have been taken from the decision notice, as these are more accurate than those on the application form. Furthermore, a site visit was undertaken on 20 December 2023 but access to the building was not possible. A second visit was then made on 15 January 2024 during which I was able to view the interior of the building.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Background and Main Issues

4. Article 3, Schedule 2, Part 3, Class Q(a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits the change of use of an agricultural building to a dwellinghouse together with building operations reasonably necessary to enable the conversion.
5. Paragraph Q.1.(i) states that such development 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, and partial demolition to the extent reasonably necessary to carry out such building operations.

6. If the proposal accords with paragraph Q.1, paragraph Q.2.(1) lists conditions under which the developer must apply to the local planning authority for a determination as to whether prior approval will be required regarding, among other things, the impact on: transport and highways; contamination risks; and whether the location or siting of the building would make it otherwise impractical or undesirable for the building to be used as a dwellinghouse.
7. The main issues in this appeal are: (i) whether or not the proposal is permitted development; (ii) whether prior approval should be given having regard to transport and highways; (iii) whether prior approval should be given having regard to contamination risks; and (iv) the effect of the proposal on ecology.

Reasons

Permitted Development

8. The site is one of a cluster of buildings in the open countryside. Its sides are largely constructed from corrugated metal sheeting, with a low section of breeze blocks and a wooden entrance door. Internally, I observed a wooden frame of beams and poles across the walls and ceiling and what appeared to be a concrete floor. As part of the proposal the building would be converted to a dwelling.
9. There is no dispute between the main parties that the building is an agricultural building for the purposes of Class Q of the GPDO and, based on my observations, I have no reason to conclude otherwise. However, the Council is concerned with the extent of works required for the building to function as a dwelling.
10. Paragraph 105¹ of the Planning Practice Guidance (the PPG) is clear that it is not the intention of Class Q to allow rebuilding work beyond what is reasonably necessary for conversion to residential use. Rather, it is only where the existing building is already suitable for such conversion that the permitted development right applies. The Council has drawn my attention to the case of *Hibbitt & another v SSCLG & Rushcliffe Borough Council* [2016] EWHC 2853 (Admin). Among other things this explores the distinction between works required for the conversion of an agricultural building to a dwellinghouse, and works amounting to its rebuilding or, in effect, the creation of a new building. Whether the proposal constitutes a conversion or rebuild is a matter of fact and degree.
11. No precise information on the structural condition of the building has been provided, with the submitted structural inspection report and update appearing to relate to a different building due to the photographs and reference to a proposed mezzanine. Even acknowledging the breeze blocks, concrete floor, and timber frame, the prevalence of corrugated sheeting lends the building an overall lightweight appearance such that without substantive evidence I cannot be certain of its overall structural condition or suitability for conversion in this regard. In any event, even if I found the building to be structurally sound, this alone would not be sufficient for the purposes of Class Q.
12. Given the lightweight appearance of the building it is likely that a range of works would be required for its conversion. The appellant states that the building operations would comprise only those that would be reasonably necessary to allow the building to function as a dwelling, with demolition only where reasonably necessary. However, the precise nature and extent of works likely to be required as part of the conversion have not been outlined.

¹ Paragraph: 105 Reference ID: 13-105-20180615

13. The proposal would occupy the same footprint and the appellant has confirmed that no floor insertion is required. Nevertheless, it is likely that the cumulative extent of the works proposed to facilitate a residential use would be extensive, as among other things they would require the replacement of the roof covering and most of the elevation walls. Even acknowledging the permitted building operations in paragraph Q.1.(i) and the guidance of the PPG, it remains that I cannot be certain of the full extent of the proposed works and whether when taken together these would fall within the scope of Class Q.
14. Schedule 2, Part 3, Paragraph W of the GPDO sets out that an application may be refused where 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. The onus is therefore on the developer to demonstrate compliance with the provisions of Class Q.
15. On the basis of my observations, the submitted evidence is not sufficient to persuade me that the building would be capable of conversion to residential use without operations that would amount to either complete or substantial re-building of the pre-existing structure. As such, insufficient information has been provided to enable me to establish with any degree of certainty whether the proposed development complies with the restrictions imposed by Paragraph Q.1 of the GPDO. I therefore conclude that the proposal would not constitute permitted development having regard to Class Q of the GPDO.

Other Matters

16. As I have concluded that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether prior approval would be required, including with regard to highways or contamination, as this would not alter the outcome of the appeal.
17. The Council has also raised concerns regarding ecology. While it is acknowledged that protected species are not specifically referred to in the GPDO, paragraph Q.2(1)(e) does require consideration of whether the location or siting of a building makes it otherwise impractical or undesirable to create a dwellinghouse. Additionally, the Council has a general legislative duty to consider whether protected species may be affected by development. However, as I have concluded that the development is not permitted under Class Q it is not necessary for me to consider the impact on protected species or ecology.
18. The site is in the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy Zone of Influence. A financial contribution has been made but, as I am dismissing for other reasons, I do not need to consider this further.

Conclusion

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

C Rafferty

INSPECTOR