



Appeal Decision

Site visit made on 13 February 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/L1765/W/23/3324202

Land lying to the East Side of Hundred Acres Road, Wickham, Fareham

- 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 (as amended).
 - The appeal is made by Mr Steven White against the decision of Winchester City Council.
 - The application Ref 22/02212/PNACOU, dated 29 September 2022, was refused by notice dated 20 January 2023.
 - The development proposed is change of use of a building and land within its curtilage from a use as an agricultural building to a use falling within C3 (dwelling houses), together with building operations reasonably necessary to convert the building.
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Decision

1. The appeal is allowed, and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for change of use of a building and land within its curtilage from a use as an agricultural building to a use falling within C3 (dwelling houses), together with building operations reasonably necessary to convert the building, at Land lying to the East Side of Hundred Acres Road, Wickham, Fareham, in accordance with submitted details pursuant with Article 3(1) and Schedule 2, Part 3, Paragraph Q.2(1) of the Order through application Ref 22/02212/PNACOU, dated 29 September 2022, and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing Number 22-031-150, Ground Floor Plan as Proposed Drawing Number 22-031-103 Revision B and Elevations as Proposed Drawing Number 22-031-154.
 - 2) The dwellinghouse hereby permitted shall not be occupied until works for sewage and surface water shall have been completed at the property, in accordance with details that have first been submitted to and approved in writing by the local planning authority. The sewerage and drainage system shall be thereafter retained and maintained in accordance with the approved details for the lifetime of the development.

Background and Main Issue

2. Class Q(a) of the Order permits development for 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 other limitations

and restrictions set out in Paragraph Q.1 of the Order. The Council raises no concerns in respect of the proposal satisfying the requirements stated in Paragraph Q.1 (a)–(h) and (j)–(m).

3. This Class of the Order is subject to the condition that before beginning the development, prior approval is required, amongst other matters, in respect of transport and highways impacts, noise impacts, contamination and flooding risks on the site, whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwelling, and the design or external appearance of the building. The Council has not raised concerns about these prior approval matters in this case, subject to conditions.
4. The main issue is therefore:
 - Whether the proposal would be permitted development in terms of the requirements and limitations under Article 3(1), Schedule 2, Part 3, Class Q of the Order, having regard to building operations reasonably necessary for the building to function as a dwellinghouse.

Reasons

5. The building is a flat roofed, single storey structure. It is constructed in masonry blockwork and has a metal roof. The structure also includes glazed windows complete with tiled ledges and has a concrete floor. The blockwork is cracked, lintels are rotten, and the building generally appears in a poor state of repair. However, even in poor condition, with the features described above, it has considerable substance and solidity, such that the structure cannot be regarded as either skeletal or particularly minimalist.
6. It is proposed that the exterior walls of the building would be repaired to match the existing external surfaces, and the corrugated metal roof would be replaced like for like. It is also proposed that existing windows, lintels and roof beams would be replaced, and the main door for the dwelling would be a replacement of an existing door. As such significant works would be carried out on the building. However, much of the operations outlined above would be replacement of existing features and materials that are in a poor condition, and therefore could be considered as building maintenance that is likely to be exempt from the definition of development.
7. Also, while the appellant's Structural Inspection Report suggests that work required to make the building habitable as a dwelling would include a new skin to the walls, this would be internally. As advised in Planning Practice Guidance (PPG), internal works are not generally considered development.
8. The existing doors on the southern elevation of the building would be infilled under this scheme. However, this already appears a relatively solid and enclosed elevation, with the doors amounting to a small proportion of this long exterior wall. As such the replacement of openings with solid wall on this southern elevation would be limited. Also, while there would be external changes on existing openings on other aspects of the building, the plans show that the number of new openings required for the building to function as a dwelling would be minimal.
9. In any event, Paragraph Q.1 (i)(aa) of the Order allows the installation or replacement of windows, doors, roofs, or exterior walls, to the extent reasonably necessary for the building to function as a dwellinghouse. The proposed works outlined above fall within the operations outlined in this Paragraph. Also, changes required to the building, outside of that considered maintenance, would be limited, such that

these proposed operations would not extend beyond that which would be considered reasonably necessary to convert a building to a dwelling.

10. PPG cautions that it is not the intention of permitted development rights to allow rebuilding work which would go beyond what is reasonably necessary for this use. Related to this, attention is drawn to the Courts findings in the Hibbit Judgment. However, that case involved a barn which was open on three sides, and substantial works would have been required in that case to convert that skeletal structure to a dwelling. As already outlined the building subject of this appeal is solid and largely enclosed, and distinctly different from the structure on which the Hibbit Judgment was based.
11. This aside, concern has been raised about the strength and stability of the building, and its suitability for the proposed change of use in these respects. The Structural Report states that some rebuilding works would be necessary. However, it is estimated that this would amount to only 16% of the walls being rebuilt.
12. Also, the floor condition has been found to be good. While works to the foundations would be necessary, this appears limited to strengthening of existing foundations through piling. Works would be required on the roof joists and to stabilise walls. However, much of this strengthening would involve the replacement of existing joists or interior works. Moreover, the Structural Report concludes that 80 – 90% of the floor and wall structure could be retained, and no compelling evidence has been advanced that would lead me to question this.
13. Given the above factors, a substantial rebuilding would not be required to facilitate the proposed change of use, and I find that the building operations proposed fall within those permitted by Paragraph Q.1(i) of the Order. The Council has not identified conflict with any other limitation and restriction in this Paragraph of the Order, and I find no reason to disagree with the Council's conclusions on those matters.
14. Therefore, I conclude that the proposal would be permitted development in terms of the requirements and limitations under Article 3(1), Schedule 2, Part 3, Class Q of the Order, having regard to building operations reasonably necessary for the building to function as a dwellinghouse.

Other Matters

15. The appeal property is within the catchment area of the Solent Maritime Special Area of Conservation and the Solent and Southampton Water Special Protection Area. The Solent and its inlets provide unique and complex marine and estuarine habitats which include the estuary, mud flats and sand banks. The flora of these habitats includes specialist plant species, and the areas also provide important feeding and breeding habitats for rare birds.
16. It has been found that these protected habitats are in unfavourable condition due, amongst other matters, to an exceedance in nitrogen. Accordingly, the advice from Natural England is that additional development that would lead to a net increase in population served by wastewater systems, including new homes, would have a likely significant adverse effect on the integrity of the riverine habitats.
17. Given the unfavourable condition of the habitats, a single new dwelling, if it was to result in a net increase in nutrients being released in the catchment area, is likely to have an adverse impact on the habitats in combination with other plans and projects. This proposed change of use would result in a net gain of residential units at the

property and therefore likely significant adverse effects cannot be ruled out in this case.

18. Relevant to this matter, the grant of planning permission under Article (3)1 of the Order is subject to the compliance with Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). Effectively, Article (3)1 of the Order provides a pre-commencement condition which must be met, where the development would affect a protected habitat, before the works can be undertaken as permitted development.
19. A separate application to the Council under Regulation 77 of the Habitats Regulations must be made in this case, to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of this matter, the scheme could be undertaken as permitted development under the Order. Based on the evidence before me, it does not appear this application has yet been made. However, as the Regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issue that I have examined.

Conditions

20. Any prior approval granted for the development under Part 3, Class Q of the Order is subject to the condition under Paragraph Q.2.(3) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date. Accordingly, it is not necessary to impose a time condition in this case.
21. Paragraph W(13) of Schedule 2, Part 3 of the Order allows for the imposition of conditions reasonably related to the subject matter of the prior approval. I have considered the conditions suggested by the Council in light of this paragraph and the advice on conditions in national guidance.
22. Accordance with the approved plans is necessary for certainty regarding design and in the interest of the appearance of the area. Recommendations in the Structural Report generally relate to repair works or are matters likely to be dealt with by different regimes such as Building Regulations. As such, a separate condition referencing the report is unnecessary.
23. Approval of a suitable and sustainable drainage scheme is relevant to contamination and flood risk prior approval matters and is necessary for this change of use. Wastewater related to this use could have consequences on the identified protected habitats. However, as already outlined, there are provisions, under the Habitats Regulations and in the Order, for an assessment to determine whether the scheme could be undertaken as permitted development. As such, any significant adverse impacts on the habitats would need to be considered and addressed at the pre-commencement stage. In light of this, the clear justification that is required for this drainage condition to be 'pre-commencement' do not exist in this case.

Conclusion

24. For the reasons given above I conclude that the proposal would be permitted development under this Class of the Order. The appeal should therefore be allowed, and prior approval granted.

A J Sutton

INSPECTOR