



Appeal Decision

Site visit made on 8 May 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20TH May 2024

Appeal Ref: APP/P1133/W/24/3336946

**Wheatsheaf Barn, Lower Cuthill Farm, Saturdays Lane,
off Edginswell Lane, Edginswell TQ12 5LU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Miss G.J Green against the decision of Teignbridge District Council.
 - The application Ref is 23/01838/NPA.
 - The development proposed is application for prior approval under Schedule 2, Part 3, Class Q (a) and (b) and paragraph W of the GPDO for change of use of agricultural building to a dwellinghouse.
-

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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for application for prior approval under Schedule 2, Part 3, Class Q (a) and (b) and paragraph W of the GPDO for change of use of agricultural building to a dwellinghouse at Wheatsheaf Barn, Lower Cuthill Farm, Saturdays Lane, off Edginswell Lane, Edginswell TQ12 5LU in accordance with the application 23/01838/NPA and the details submitted with it including plan Nos 202331/6 and 202331/15. The approval is subject to conditions set out by Paragraph Q.2(3) of the GPDO in that development must be completed within a period of 3 years from the date of this decision as well as the provisions specified in paragraph W.

Preliminary Matters

2. The description of development above and in the formal decision is taken from the Council's decision notice. This more accurately reflects the proposal than the wording included in the application form.
3. Schedule 2, Part 3, paragraph W of the GPDO sets out the procedures which are required to be followed for prior approval applications such as the appeal case. It includes that the development must not begin before, amongst other things, (11)(c) the expiry of 56 days following the date on which the application was received by the local planning authority, without the authority notifying the applicant as to whether approval is given or refused.
4. The application forms are dated 6 October 2023. However, the Council's decision notice and submissions confirm the valid date as 13 October 2023. This is not disputed. The Council made their decision on 1 December 2023,

which is within the 56-day period. Even though certain documents submitted with the application were not considered by the Council, this does not mean that the development would be deemed to be granted.

5. For Class Q, 'curtilage' is defined in paragraph X as meaning '(i) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.
6. Although hand drawn, the plans show a red line around the appeal building that meets the aforementioned tolerances.

Background and Main Issues

7. The Planning Practice Guidance (PPG) states that permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity. This is effectively a 2-stage process where it is necessary in the first instance to determine whether or not the proposal is permitted development.
8. Class Q of Part 3 of Schedule 2 to the General Permitted Development Order (the GPDO) states that development consisting of Q(a) 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 of the Use Classes Order; and Q(b) building operations reasonably necessary to convert the building, is permitted development.
9. 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. Additionally, the PPG says that the existing building must be suitable for conversion to residential use to benefit from the permitted development right. Whether the proposal constitutes a conversion or rebuild is a matter of fact and degree, determined on the circumstances of the case.
10. Paragraph Q.1.(h) of the GPDO states that development is not permitted if it would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.
11. The Council refused the application for prior approval on the basis that inadequate information in respect of structural integrity was submitted to demonstrate the building could function as a dwelling. It did so without noticing the submission of a structural report. However, representations are made within this appeal on that document, which the appellant has commented on. Therefore, no one would be prejudiced as a result.
12. The Council also considered that the proposed cladding would extend beyond the existing dimensions of the existing building.

13. There is no dispute between the parties that the remainder of the requirements of Q.1 are met. Additionally, the Council raised no concerns in respect of the prior approval matters. These include transport, noise, contamination, flood risk, location or siting, design or external appearance and natural light. I find no reason to disagree.
14. Therefore, I consider the main issue in this case to be whether the proposed development would be permitted development with regard to the provisions of Part 3, Class Q, paragraph Q.1(a).

Reasons

15. The appeal site comprises a single storey, flat roofed agricultural barn with a level concrete floor. The submitted structural report (SR) identifies the barn as a timber framed structure with timber roof, built off a perimeter blockwork wall. The ply sheathing forms the visible element of the internal walls and is attached to the internal timber frame.
16. Whilst the centrally positioned internal walls are non-load bearing, they are not critical to structural stability and act to separate the internal space. The evidence shows that the whole existing structure, including the multi construction roof is stable and capable of supporting additional loadings associated with the proposed development. There is no evidence that the ground is unstable.
17. Some sections of the roof are not supported on joists or ply. However, the appellant claims that this would be self-supporting. Based on my observations of the building and in the absence of any compelling evidence to the contrary, I find no reason to disagree.
18. The GPDO makes no such distinction between structural and non-structural works, and it places no restriction on whether works are structural or not. In that context, the introduction of internal walls, fixtures, fittings, insulation, windows, doors, and a self-supporting ceiling would all be reasonably necessary operations. Moreover, even if the metal roof were to be replaced after having been checked, the replacement of a roof is expressly permitted under Q.1.(i).
19. Although basic, the plans show shiplap cedar boarding as an external material finish. This would replace the existing mix of cladding to the building. It is not evident that the appeal building would be extended beyond its existing dimensions. The proposal meets Q.1.(h).
20. Within the summary of proposed works, some repair/making good of the walls is noted as being required to address the condition of the building. Whilst these works are not specifically identified, it is clear that it would not be necessary to completely rebuild the walls or roof. This would be consistent with my on-site observations that the building appeared to be in generally good order, save for some sections of external cladding. Therefore, enough information has been provided to demonstrate the building is capable of being used as a dwelling without being re-built.
21. Drawing these matters together, even when taken cumulatively, the works are reasonably necessary to facilitate the conversion. They would not amount to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. The evidence shows that the structural integrity

of the building is sound and that it would be maintained to form an integral aspect of the new dwelling. Therefore, the proposed operations do not exceed those permitted under Class Q.1.(i) or (h) of the GPDO.

Other Matters

22. It is noted that a site visit was carried out by the Council's Officer on 23 November 2023. This matter is not determinative.
23. Since the Council determined application Ref 23/01838/NPA, a similar application was refused at the site under 24/00004/NPA. This was due, the Council says, to insufficient information in respect of the necessary building works and the extent of external cladding. Whilst this is noted, I have found the proposal to be permitted development. In any case, I am not bound to follow the Council's stance in this regard.
24. My attention has also been drawn to a previous appeal decision at the site under APP/P1133/W/22/3306184. Very little information has been provided in respect of the details of that scheme. However, the Council's submission highlights that the previous structural report was found to be ambiguous, lacking details including photos and covered more than one building. However, the SR includes photos of one building and a commentary on its structural integrity. Furthermore, that appeal concerned a smaller section of building than that proposed with this scheme. For these reasons, that appeal is materially different to this proposal.
25. The appeal site is within the Landscape Connectivity Zone of the South Hams Special Area of Conservation (SAC). This is designated for Greater Horseshoe Bats, which are said to be sensitive to lighting.
26. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, such as an SAC, before the works can be undertaken as permitted development. This includes a separate application to the Local Planning Authority under regulation 77 of the Habitats Regulations to allow the Local Planning Authority to undertake an appropriate assessment. Depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.
27. There is no evidence before me that a regulation 77 application has 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. Therefore, I do not need to consider this matter further as part of this appeal.

Conditions

28. Any prior approval and planning permission granted for development under the GPDO is subject to the condition that it must be completed within a period of 3 years starting with the prior approval date, as well as the provisions of paragraph W.

29. I have listed the submitted plans in my decision. Furthermore, paragraph W (12) of the GPDO requires development to be carried out in accordance with the details submitted. As such, a plans condition is unnecessary.
30. Section W (13) of Part 3 of Schedule 2 of the GPDO allows for the grant of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
31. The Council suggested a compliance condition in respect of a bat report. However, the evidence shows that one was not provided. It would consequently not meet the tests of enforceability. Nevertheless, I have paid regard to S40 of the Natural Environment and Rural Communities Act 2006 in respect of the purpose of conserving biodiversity. However, the GPDO does not, in Article 3(1), or otherwise, provide that permitted development is subject to the S40 duty. Moreover, biodiversity is not reasonably related to any of the prior approval matters. I have therefore not imposed the Council's suggested biodiversity compliance condition, or those relating to lighting and the aforementioned SAC.
32. Soakaways are shown on the plans and the development would be subject to building regulations. There is little evidence that the suggested surface water drainage condition would be necessary to make the development acceptable in planning terms. I have not imposed this suggested condition.

Conclusion

33. For the reasons given, the appeal succeeds.

J Hills

INSPECTOR