



Appeal Decision

Site visit made on 15 May 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal A Ref: APP/E2205/X/23/3327501

The Grange, Agricultural Barn 2, Appledore Road, Kenardington, Kent TN26 2LZ Grid Ref Easting: 597279, Grid Ref Northing: 132683

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Peter Hunt, Fernfield Homes Ltd against the decision of Ashford Borough Council.
- The application ref PA/2022/2935, dated 1 December 2022, was refused by notice dated 8 February 2023.
- The application was made under section 192(1)(a) of the Act.
- The development for which a certificate of lawful use or development is sought is: Proposed change of use and operational development of barn 2 and land within its curtilage from a use as agricultural to a use falling within a residential C3 use (3no. smaller dwellinghouses and 2no. larger dwellinghouses).

Appeal B Ref: APP/E2205/X/23/3327502

**The Grange, Appledore Road, Kenardington, Kent TN26 2LZ
Grid Ref Easting: 597220, Grid Ref Northing: 132751**

- The appeal is made under section 195 of the Act against a refusal to grant an LDC.
- The appeal is made by Mr Peter Hunt, Fernfield Homes Ltd against the decision of Ashford Borough Council.
- The application ref PA/2022/2936, dated 17 November 2022, was refused by notice dated 8 February 2023.
- The application was made under section 192(1)(a) of the Act.
- The development for which a certificate of lawful use or development is sought is: Proposed change of use of an agricultural building (Barn 1) and land within its curtilage to 2no. Larger dwelling houses and 3no. Smaller dwelling houses and associated operational development.

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. I have taken the description of the proposed development for each appeal in the banner headings above from the Council's decision notices. These are different to the extensive text provided in the application forms, but the appellant's statements of case for each appeal confirm they are the development for which LDCs are sought. I have taken the site addresses for the banner headings from the application forms.
4. As the appeals are in respect of applications seeking LDCs, the onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed development would have been lawful on the dates the applications were made.

Background

5. The site in Appeal A includes 3 agricultural buildings at The Grange, which are annotated Barns 1, 2 and 3. The site in Appeal B includes 2 agricultural buildings at Horsemarsh, which are annotated Barns 1 and 2. The Grange and Horsemarsh share access from Appledore Road, but they have separate County Parish Holding Numbers. In the interests of clarity, I shall refer to the above buildings in Appeal A as Barns A1, A2, and A3, and the above buildings in Appeal B as Barns B1 and B2.
6. Section 57 of the Act sets out that planning permission is required for the development of land. Section 55 provides the relevant meaning of development, which includes building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Subsection (1A) of section 55 clarifies that in this context 'building operations' includes demolition of buildings; however, subsection (2)(g) excludes from the definition of development the demolition of any building specified in a direction given by the Secretary of State. With this in mind, the demolition of a building with a cubic content of less than 50 cubic metres shall not be taken to involve development requiring planning permission¹.
7. Article 3(1) and Class B of Part 11, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grant planning permission for any building operation consisting of the demolition of a building subject to limitations and conditions. Before beginning any such demolition, condition B.2(b) of Class B requires the developer to apply for a determination as to whether prior approval will be required as to method of demolition, and to receive confirmation that prior approval is not required or that prior approval is required and granted, or to obtain deemed prior approval.
8. Article 3(1) and Class Q of Part 3, Schedule 2 of the GPDO grant planning permission, subject to limitations and conditions, for:

'Development consisting of— (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 to the Use Classes Order²; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.'
9. Condition Q.2(1) of Class Q requires prior approval to be sought from the local planning authority before any such development is begun. Prior approval was sought separately for the change of use of Barns A2³ and B1⁴ and land within their curtilages to 5 dwellings in accordance with the procedures referred to by Class Q. The Council failed to determine those applications within the relevant timescale. I have not been provided with the full details of those applications, but it is not disputed that prior approval is deemed to have been granted on account of the Council's failure to determine them.

¹ The Town and Country Planning (Demolition - Description of Buildings) Direction 2021

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

³ The Council's ref: 22/01054/AS

⁴ The Council's ref: 22/01055/AS

10. So far as relevant to Class Q, 'curtilage' is defined at paragraph X of Part 3, Schedule 2 of the GPDO as follows:

'(a) 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 (b) 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'.

The Proposals

11. In Appeal A it is proposed to demolish Barns A1 and A3 and 3 feed silos and carry out various works to Barn A2 to create 5 dwellings with associated garden and parking areas. Ground levels around Barn A2 would be altered when removing an existing concrete base and patios and steps would be constructed across the south elevation of Barn A2.
12. In Appeal B it is proposed to demolish Barn B2 and 2 feed silos and carry out various works to Barn B1 to create 5 dwellings with associated garden and parking areas. Ground levels around Barn B1 would be altered when removing an existing concrete base and patios would be constructed across the south elevation of Barn B1.
13. In both appeals it is disputed whether the development would fall within the description of development referred to by Class Q and comply with limitations Q.1(b), (ba), (d), and (i), or would otherwise require planning permission.

Main Issue

14. The main issue in both appeals is whether the Council's decisions to refuse to grant LDCs were well-founded, with particular regard to whether the developments would be 'permitted development'.

Reasons

Appeal A

15. Existing window openings would be changed in size and additional windows and doors would be installed to Barn A2 on its north and south elevations. Doors on its east and west elevations would be blocked up. The existing footings, blockwork and frame of the building would remain, while new internal loadbearing walls and roofing would be installed.
16. A structural report⁵ suggests that a new structural floor may need to be laid over the existing floor slab, and that external walls would need to be upgraded with a new inner skin and either overclad externally or rebuilt in sections. The structural report concludes that Barn A2 'could be converted without any significant rebuilding or loss of frames etc. although there will be some internal support system required to facilitate the increase in deadloads. The detailed design and method of construction will need to be modified to enable the buildings to be largely retained'. The increase in deadloads would be created by the replacement roofing, which would be necessary for residential use.
17. Development is not permitted by Class Q if it involves building operations other than the installation of windows, doors, roofs and various services to the extent

⁵ By Rubicon Chartered Building Consultancy, ref: 2023-2318

reasonably necessary for the building to function as a dwellinghouse, and partial demolition to the extent reasonably necessary to carry out those building operations⁶.

18. The evidence indicates that there are no functional reasons for the existing frame and floor slab of Barn A2 to be retained. The structural report states that retention of the existing frame would be possible, rather than necessary. On the evidence provided, the existing frame would become redundant on account of the new internal support system needed. No existing or proposed internal sections of Barn A2 or other details have been provided to suggest otherwise.
19. The structural report's finding that no 'significant rebuilding' would be required does not convince me that the works would not comprise substantial rebuilding, exceeding what could reasonably be described as the conversion of Barn A2. It states that the detailed design and method of construction would need to be modified to enable the building to be largely retained. No details have been provided to clarify what this means in the context of the proposal. Therefore, I consider it likely that the proposed works to Barn A2 would not fall within the description of development referred to by Class Q and would not accord with limitation Q.1(i).
20. It is clear that the full extent of demolition and works on land surrounding Barn A2 would not fall within the description of development specified as 'permitted development' at Class Q. The cubic contents of the buildings to be demolished have not been provided, but it appears likely that the demolition of Barns A1 and A3 would comprise development requiring planning permission. I have not been referred to any prior approval or planning permission the proposed demolition may benefit from.
21. Class Q refers to a change of use of a building and any land within its curtilage. With regard to the meaning of 'curtilage' provided above, the parking area on the footprint of Barn A1 would fall outside the curtilage of Barn A2. The garden areas would impinge on land immediately beside or closely associated with Barn A3, outside the curtilage of Barn A2. As a whole, the extent of land proposed to change use would exceed that authorised by the GPDO and I have not been referred to any other planning permission the proposed parking and garden areas may benefit from.

Appeal B

22. Existing window openings would be changed in size and additional windows and doors would be installed to Barn B1 on its north and south elevations. Doors and windows on the west and east elevations would be blocked up and a window would be inserted in the east elevation. The existing footings, blockwork and frame of the building would remain, while new internal loadbearing walls and roofing would be installed. The entirety of the west elevation external wall and over half of the south elevation external wall would be demolished and replaced with new external walls set in from the existing. This would create a building with a substantially different footprint and form.
23. A structural report⁷ explains that the building's foundations would need to be exposed to confirm whether underpinning or a new structural slab would be required, and that a new inner skin would need to be provided, with external

⁶ Limitation Q.1(i)

⁷ By Rubicon Chartered Building Consultancy, ref: 2023-2331

walls retained with cladding or rebuilt in sections. The structural report concludes that Barn B1 'could be converted without any significant rebuilding or loss of frames etc. although there will be some internal support system required to facilitate the increase in dead loads associated with the higher standards of construction expected with dwelling can be achieved. The detailed design and method of construction will need to be modified to enable the buildings to be largely retained'. The increase in deadloads would be created by the replacement roofing, which would be necessary for residential use.

24. The extent of demolition to Barn B1 could not be described as reasonably necessary to carry out the installation of replacement windows, doors, roof, exterior walls or services, with regard to limitation Q.1(i). This is because such building operations, if associated with a conversion of the building, could reasonably be carried out without demolishing the entirety of the west elevation wall and over half of the south elevation wall.
25. The evidence indicates that there is no reason for the existing frame and floor slab of Barn B1 to be retained. The structural report indicates that retention of the existing frame would be possible, rather than necessary. On the evidence provided, the frame would become redundant on account of the new internal support system needed. No existing or proposed internal sections of Barn B1 or other details have been provided to suggest otherwise.
26. The structural report's finding that no 'significant rebuilding' would be required does not convince me that the works would not comprise substantial rebuilding, exceeding what could reasonably be described as a conversion of Barn B1. It suggests that the detailed design and method of construction would need to be modified to enable the building to be largely retained. No details have been provided to clarify what this means in the context of the proposal. Therefore, I consider it likely that the proposed works to Barn B1 would not fall within the description of development referred to by Class Q and would not accord with limitation Q.1(i).
27. For the same reasons explained above in respect of Appeal A, the demolition and works on land surrounding Barn B1 would not fall within the description of development specified as 'permitted development' at Class Q. It appears likely that the demolition of Barn B2 would comprise development requiring planning permission. I have not been referred to any prior approval or planning permission the proposed demolition may benefit from.
28. In addition to the above, limitations Q.1(b)(i)(aa) and (bb) of Class Q restrict the cumulative number of separate dwellinghouses with floor spaces exceeding 100 square metres within an established agricultural unit (EAU) to 3, and the cumulative floor space changing use to a dwellinghouse or dwellinghouses with floor spaces exceeding 100 square metres within an EAU to 465 square metres. The plans state Units 1 to 3 would have floor spaces of 100 square metres each and Units 4 and 5 would have floor spaces of 232 square metres each, but there are no detailed measurements or calculations to show these are correct. The Council refers to variances in internal wall thicknesses and claims the dwellings would have floor spaces exceeding those stated. This has not been disputed by the appellant. I am therefore unable to find the development would accord with limitations Q.1(b)(i)(aa) and (bb) of Class Q.
29. The parking area would be located on land between Barns B1 and B2. That land could be seen as within the curtilage of either building. The garden areas to

Units 4 and 5 would extend significantly over the footprint of Barn B2, outside what could reasonably be described as the curtilage of Barn B1. As a whole, the extent of land proposed to change use would exceed that authorised by the GPDO and I have not been referred to any other planning permission the proposed garden areas may benefit from.

Other Matters

30. Limitations Q.1(b) and (d) of Class Q refer to maximum cumulative numbers of dwellinghouses permitted within an EAU. It is of little relevance to these appeals whether the land in Appeal A is within the same EAU as the land in Appeal B. This is because Appeal A and Appeal B comprise separate proposals independent of each other, and they must be considered on the basis of the circumstances at the time the applications were made. Therefore, even if the land is within the same EAU, each appeal must be considered as a standalone proposal. Section 192(4) of the Act would be relevant where there is a material change in circumstances after any LDC is granted.
31. Limitation Q.1(ba) sets a maximum floor space for any dwellinghouse developed under Class Q. There is no evidence to suggest any of the proposed dwellings in either appeal would exceed 465 square metres in floor space.

Conclusions

32. The proposals in Appeals A and B would comprise development requiring planning permission. That development would not benefit from planning permission granted by the GPDO. I have not been referred to any other planning permissions the development may benefit from. It has not therefore been demonstrated, on the balance of probabilities, that the development proposed in Appeal A or Appeal B would have been lawful on the date of the applications. I have taken the caselaw and Planning Practice Guidance referred to by the main parties into account when reaching my conclusions.

Appeal A

33. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed change of use and operational development of Barn A2 and land within its curtilage from a use as agricultural to a use falling within a residential C3 use (3no. smaller dwellinghouses and 2no. larger dwellinghouses) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Appeal B

34. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed change of use of an agricultural building (Barn B1) and land within its curtilage to 2no. Larger dwelling houses and 3no. Smaller dwelling houses and associated operational development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR