



Appeal Decision

Site visit made on 26 June 2024

by A Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Appeal Ref: APP/R0660/W/23/3331816

The Royals, Royals Green Lane, Burleydam SY13 4AZ

- 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 Mr Lee James against the decision of Cheshire East Council.
 - The application Ref is 23/2813N.
 - The development proposed is conversion of 2no barns into 1no dwelling house.
-

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) (GPDO) for conversion of 2no barns into 1no dwelling house at The Royals, Royals Green Lane, Burleydam SY13 4AZ in accordance with the application Ref 23/2813N and the details submitted with it, and subject to the conditions in the attached schedule.

Preliminary Matters

2. On 21 May 2024, Statutory Instrument 2024 No 579 (SI) came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the GPDO. Article 10 of this SI introduces transitional arrangements so that any development that is permitted under Class Q immediately before 21 May 2024 but is no longer permitted as a result of this Order will continue to be permitted until the end of 20 May 2025. Both parties have been consulted on the changes and I have taken their comments into account. Due to the transitional arrangements, I have proceeded to determine the appeal in accordance with the GPDO provisions that were in force at the time the original application was submitted in July 2023. All references to the GPDO in this decision therefore relate to the version that was in force at that time.
3. The Planning Practice Guidance (PPG) advises that the starting point for Class Q of the GPDO is that the permitted development rights are a grant of planning permission, subject to the prior approval requirements. Therefore, it is necessary in the first instance to determine whether the proposal falls within the scope of permitted development.
4. Schedule 2, Part 3, Class Q of the GPDO permits either (a) the change of use of a building and any land within its curtilage, from use as an agricultural building to a use falling within Class C3 (dwellinghouses) or (b) the change of use together with building operations reasonably necessary to convert the building

- referred to in (a). The appeal relates to a change of use to residential as well as associated facilitating works.
5. Paragraph Q.1 goes on to set out several limitations of Class Q. Of these, paragraph Q.1(i) specifies that development is not permitted by Class Q if it would consist of building operations other than those within a detailed list. Paragraph Q.1(m) states that development is not permitted by Class Q if the building is a listed building.
 6. Paragraph Q.2(1) sets out that development is permitted subject to the condition that before beginning the development the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required regarding several considerations. One such consideration (f) relates to the design or external appearance of the building.
 7. The Council have refused the application for the reasons that the proposal would not comply with the requirements of Class Q(a) or (b) of the GPDO, nor with paragraphs Q.1(i) and (m) and therefore would not be permitted development. The Council have then proceeded to determine that the details submitted in respect of Q.2(1)(f) relating to design and external appearance of the building are unacceptable.

Main Issues

8. The main issues are:
 - whether the proposed development would be permitted development under Schedule 2, Part 3, Class Q of the GPDO, with particular regard to whether the extent of the required building operations would be reasonably necessary for the building to function as a dwellinghouse and whether the buildings are listed buildings; and,
 - if permitted and not excluded under Class Q, whether the prior approval details relating to the design or external appearance of the proposed development would be acceptable, with particular regard to the effect on the setting of nearby listed buildings.

Reasons

Whether the proposed development would be permitted development

Building operations (Q and Q.1(i))

9. The appeal site is located in a rural area and currently comprises three agricultural barns, one of which is proposed to be demolished. The barns are accessed separately to the associated farmhouse off Royals Green Lane. While not currently used for agriculture, there is no dispute between the parties that the two buildings proposed for conversion were last used for agricultural purposes. From the evidence before me, I see no reason to disagree.
10. The Council attest that due to the amount of structural support likely to be required to the buildings, the proposal would not represent a conversion, therefore it would fail the requirements of Part Q at the first hurdle.
11. Paragraph Q.1(i) excludes from Class Q(b) 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 the building operations allowed.

12. The PPG¹ advises that the right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, the PPG is clear that it is not the intention of the permitted development right to allow rebuilding work that would go beyond what is reasonably necessary for the conversion of the building to a residential use. Accordingly, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to benefit from the permitted development rights.
13. Neither the GPDO nor the PPG define the term 'reasonably necessary'. Consequently, this is a matter of planning judgement based on fact and degree of an individual case. The Council have drawn my attention to the *Hibbitt Judgement*². *Hibbitt* related to the conversion of an agricultural building that was open to all four sides. The Judgement considered whether the works required to bring about the change of use amounted to a re-build or 'fresh' build as opposed to a conversion. Although the *Hibbitt* case is not directly comparable to that before me, the principles established within the Judgement are relevant.
14. The appellant's structural report (SR) identifies Barn 1 indicated on the submitted site plan as a timber framed shed with cement racking panels over block walls with additional internal supports to the portal frames at regular intervals. It has a corrugated sheet roof, boarded underneath, and a pre-cast concrete slatted floor. The SR finds that, despite some damage to the external sheeting panels at fixing points and some erosion of the block walls at the interface with the ground, the walls are generally vertical. A trial hole suggests the depth of foundations is just over 1m into sandy clay. It concludes that no underpinning is envisaged to be required and the building would be suitable for conversion provided the racking walls and the intermediate supports at the rafters are retained.
15. The SR identifies that Barn 2 is in poor condition. On this basis, the proposal includes the demolition of this barn to form the garden for the residential conversion. Barn 3 is identified in the SR as a steel portal frame building with corrugated metal cladding above concrete block walls. It incorporates timber eaves and cladding beams and a single skin corrugated sheet roof. The walls were found to be vertical and bed joints horizontal throughout the building. A trial hole indicated that the foundations of Barn 3 are 200mm concrete strips at a 500mm depth to stiff sandy clay. The SR concludes that as the foundations are of a suitable thickness at a depth below the frost zone, no underpinning is likely to be required and the steel portal frame is suitable to take the increased roof loading from increased insulation requirements. It also states that provided additional restraint for wind loading through bracing is incorporated, the building would be suitable for residential conversion.
16. The works recommended for Barn 1 to be converted would involve retention of the 4no timber racking wall supports and blockwork walls. The internal layout of Barn 1 indicates the considered location of the central corridor and that

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

² *Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin).

these existing supports would be retained and included within the walls to wardrobes and room divides. Renewal of rotten timbers and the replacement of the slatted concrete floor, along with new openings, metal wall cladding and roof sheeting are proposed. Any potential additional works to comply with current Building Regulations would serve to strengthen the building and support framing for openings rather than constitute re-building. This would similarly be the case in terms of the need for cross and diagonal bracing within Barn 3, which the Council affirm appears to be structurally sound.

17. The SR does not include details in relation to how the provision of a mezzanine floor to Barn 3 would impact on the structural stability of the building. Nevertheless, the insertion of a mezzanine floor would not generally constitute 'development' under Section 55(2) of the Town and Country Planning Act 1990. In addition, the PPG indicates that internal structural works, including the insertion of a mezzanine within the overall residential floor space permitted and within the context of works reasonably necessary to convert the building, would not be prohibited by Class Q³.
18. Limited information has been presented within the appeal submissions in relation to the existing small blockwork extension to Barn 3. It is proposed to retain the extension as an internal link between Barn 1 and 3 as well as to provide the main entrance to the proposed dwelling. No specific structural information in relation to this building has been provided in the SR. An aerial photograph within the appellant's statement indicates that the extension formed part of Barn 3 prior to the 20 March 2013. Therefore, it was part of an established agricultural unit at that time. In the absence of compelling evidence to the contrary, from observations at my site visit, while I cannot be certain about the foundations of the building, I consider it is of solid blockwork construction with a corrugated sheet roof and would be capable of conversion without the need for significant structural works.
19. One new opening and four rooflights would be formed within Barn 3 and the existing door opening on the north elevation would be enlarged and glazed. Four glazed doors would be formed in the north elevation of Barn 1 to replace existing small high-level openings, an existing door in the east elevation would be enlarged slightly and small windows would be inserted into existing high level openings along the south elevation. On the basis of the evidence presented, these alterations would not require significant structural work.
20. Whilst detailed structural calculations are absent from the SR, there is no alternative survey before me or other compelling evidence to demonstrate the conclusions and recommendations of the SR are incorrect or unreliable. Although external walls and roof cladding would be replaced on Barn 1 and several openings would be created or enlarged, the structural framework of both barns would be retained and reinforced, and no new foundations would be required. In any event, the proposed replacement exterior cladding and roof would fall within the scope of Class Q.1(i)(i)(aa), which allows for the installation or replacement of windows, doors, roofs and exterior walls.
21. Therefore, on the evidence before me I find the buildings would be suitable for conversion to residential use and the proposed works would fall within those permitted under Class Q(b) and would satisfy the requirements of paragraph Q.1(i) of the GPDO.

³ Paragraph Reference ID: 13-105-20180615

Listed Buildings (Q.1(m))

22. The Council's second reason for refusal refers to conflict with paragraph Q.1(m) of the GPDO. This sets out that development is not permitted by Class Q if the building to be converted is a listed building. However, the Council's officer report acknowledges that neither of the buildings are listed in their own right.
23. Even though the buildings are not listed in their own right, the officer report provides some commentary in relation to whether or not the buildings could be listed by virtue of falling within the curtilage of the adjacent listed buildings known as The Royals, a Grade II listed farmhouse as well as a Grade II listed outbuilding associated with it.
24. I note the Council's own legal advisor concluded that the buildings were unlikely to be within the curtilage of the adjacent listed buildings. Given their modern construction which most likely pre-dates 1948, I agree with that assessment. Other factors lend support to this conclusion, such as the distance between the appeal site and The Royals/ listed outbuilding, as well as the separate domestic nature and defined garden area of The Royals compared to the business-related function of the appeal buildings. In addition, the appeal site has a separate access to that of the domestic access to The Royals and a large intervening building sits between the appeal site and the listed buildings.
25. On the above basis, the proposal would comply with paragraph Q.1(m) because the buildings proposed for conversion are not listed buildings.

Conclusion on permitted development

26. Although not referred to in the decision notice, the Council's officer report comments that the proposed external cladding may increase the external dimensions of the buildings and therefore conflict with paragraph Q.1(h) of the GPDO. However, the appellant's submissions confirm that the existing timber and concrete panels forming the walls of Barn 1 would be replaced with metal sheet cladding of a similar width so as not to extend the external dimensions of the building. No substantive evidence is before me to conclude otherwise.
27. For the above reasons, I conclude the appeal buildings are not listed and the proposed building operations would meet the requirements of Class Q.1(i) to the extent that they are reasonably necessary for the building to function as a dwellinghouse. Therefore, the proposal would satisfy the requirements of Class Q(b) of the GPDO. Accordingly, the proposal would be permitted development under Article 3(1), Schedule 2, Part 3, Class Q of the GPDO.

Prior approval matters (Q.2(1)(f))

28. Notwithstanding the above conclusion in relation to paragraph Q.1(m), Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) sets out the duty to, in considering whether to grant planning permission for development which affects a listed building or its setting, have regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
29. A prior approval application is not an application for planning permission (as planning permission would be granted by the GPDO if the proposal is permitted development). However, given the reason for refusal refers to paragraph Q.2(1)(f) in relation to the design and external appearance of the building,

there is a need, in accordance with the National Planning Policy Framework (the Framework), for me to consider the effect of the proposed development on the setting of the adjacent listed building.

30. The appeal site is associated with The Royals, a detached two storey Grade II listed farmhouse. There are several other buildings loosely grouped close to the farmhouse, including a detached Grade II listed outbuilding. From my observations and the listing description, I find the significance of The Royals and the outbuilding to the north is derived from the age of the buildings, being good examples of 17th Century timber framed buildings and their association with the surrounding agricultural land. Another Grade II listed farmhouse known in the listing description as The Royals Farmhouse lies across Royals Green Road to the west of the appeal site. Its significance derives from its age and imposing symmetrical three-bay, three storey design as the main component of the Royals farmstead.
31. The appeal site would fall within the setting of these listed buildings by virtue of its visual and physical relationship and historic agricultural use forming part of the wider historic farm complex. The appeal buildings are relatively modern structures of utilitarian appearance. As such, their role in the setting of the listed buildings derives from their agricultural use and character rather than any inherent visual qualities. Nevertheless, their simple, functional appearance, is an aspect of that agricultural character.
32. The proposed development would result in additional glazing within the buildings to facilitate the proposed residential use. Nonetheless, the number of openings would not be excessive and the overall appearance of modern utilitarian rural buildings would be retained. The appeal buildings would be screened from the listed buildings by an intervening building and vegetation. Given the modern functional rural appearance of the proposed buildings and the spatial relationship between the appeal site and the nearby listed buildings, the proposed development would not undermine its contribution to the setting of the listed building.
33. For the above reasons, the effect of the proposal on the design and external appearance of the building would not be harmful to the setting of the nearby listed buildings and would result in a neutral impact on the appreciation of their significance. I therefore conclude that the proposed development would preserve the setting of the nearby Grade II listed buildings. In this respect the proposal would accord with guidance contained within the Framework, which requires, at paragraph 205 that great weight should be given to the conservation of heritage assets.
34. The Council has assessed the proposal against the criteria in relation the other conditions set out in paragraph Q.2(1) of the GPDO that refer to details of the proposed development, including transport and highways, noise, contamination, flooding, location or siting, and the provision of natural light in all habitable rooms. Subject to the imposition of conditions were I to allow the appeal, the Council is satisfied that they are met. Based on the information before me and my observations on site I have no reason to take a different view in respect of these matters. Therefore, the proposal would comply with these other matters considered under Class Q.
35. The extent of the curtilage of the building in this appeal is not in dispute and is defined by the red line shown on drawing No A4101 Rev B. This is the extent of

the land that would be subject to the change of use were I to allow the appeal. It would be an area of land immediately beside Barn 1 and would be no larger than the land area occupied by Barns 1 and 3 when taken together. As such it would comply with the interpretation of curtilage at paragraph X of Schedule 2, Part 3 of the GPDO.

Conclusion

36. For the reasons given above, the appeal is allowed and prior approval is granted subject to conditions.

Conditions

37. Paragraph Q.2(3) of the GDPO stipulates that development under Class Q is permitted subject to the condition that development must be completed within a period of 3 years starting with the prior approval date. A condition relating to the commencement of development is therefore not necessary.
38. Further standard conditions are set out in paragraph W.(12) that requires development to be undertaken in accordance with the approved plans. Conditions relating to the plans and the provision of materials as detailed on the plans are not therefore necessary.
39. Paragraph W.(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. I have had regard to the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. I have also had regard to the tests in the Framework and relevant elements of the PPG. The additional conditions are set out in the schedule at the end of this decision.
40. I am statutorily required to take reasonable steps to conserve biodiversity. Therefore, the suggested conditions in this regard are necessary to ensure that the construction of the development avoids disturbance to birds, and that suitable features for nesting birds and roosting bats are put in place, in the interests of biodiversity. A condition is necessary to address the risks associated with unexpected contamination given the previous use of the site, and to ensure that any soil imported to the site is not contaminated.
41. No exceptional reasons have been provided for the Council's suggested condition relating to removal of permitted development rights, some of which are restricted due to the development in this appeal deriving from the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO.
42. A condition in relation to demolition is not necessary as this detail is indicated on the approved plans and the method of demolition would be dealt with by other legislation. A condition requiring details of landscaping falls outside the limited scope of issues under consideration within Class Q.

A Veevers

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the recommendations made in section 6.3 of the Ecological Appraisal (Greenscape Environmental, 06/09/2022) unless varied by a European Protected Species licence subsequently issued by Natural England. Agreed features for roosting bats shall be installed in accordance with the approved details and retained as such thereafter.
2. Prior to the use of any building materials in the development hereby permitted, a strategy shall be submitted to and agreed in writing by the Local Planning Authority for the incorporation of features to enhance the biodiversity value of the proposed development. The submitted strategy shall include proposals for the provision of features for nesting birds including swifts and roosting bats. The agreed features shall be installed in accordance with approved details and retained as such thereafter.
3. No removal of any vegetation or the demolition or conversion of buildings shall take place between 1st March and 31st August in any year, unless a detailed survey has been carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone take place.
4. (a) Any soil or soil forming materials to be brought to site to be used for the construction of the garden areas or soft landscaping shall be tested for contamination and suitability for use in line with the Council's 'Developing Land within Cheshire East Council – A Guide to Submitting Planning Applications, Land Contamination'.

(b) Prior to occupation, evidence and verification information in relation to (a) above (for example: quantity/source of material, laboratory certificates, depth measurements, photographs) shall be submitted to, and approved in writing by, the Local Planning Authority. Only soil or soil forming materials approved by the Local Planning Authority in accordance with (a) above, shall be used for construction of the garden.

If, during the course of development, contamination not previously identified is found to be present on the site, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme which shall first be submitted to and agreed in writing by the Local Planning Authority.