



Appeal Decision

Site visit made on 25 June 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/M1005/W/24/3339687

Nether House Farm, Hillcliff Lane, Turnditch, Belper, Derbyshire DE56 2EA

- 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 Mitchell Shore and Miss Katie Weeds against the decision of Amber Valley Borough Council.
 - The application Ref is PDR/2023/0057.
 - The development proposed is application to determine if prior approval is required for a proposed residential conversion of existing agricultural building (Building Three).
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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) for application to determine if prior approval is required for a proposed residential conversion of existing agricultural building (Building Three) at Nether House Farm, Hillcliff Lane, Turnditch, Belper, Derbyshire DE56 2EA in accordance with the application PDR/2023/0057 and the details submitted with it, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Mitchell Shore and Miss Katie Weeds against Amber Valley Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the description of development from the appeal form, as it was not detailed on the application form.
4. 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 General Permitted Development Order (GPDO). 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 that the original application was submitted in December 2023. All references to the GPDO in this decision therefore relate to the version that was in force at that time.
5. Under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO development is permitted for 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) together with building operations reasonably necessary to convert that building, subject to limitations and conditions.

6. The Council may refuse the application where it considers that the proposed development does not comply with, or that the developer has provided insufficient information to enable the Council to establish whether the proposed development complies with, the conditions, limitations or restrictions set out in paragraphs Q.1 and Q.2.
7. The Council has refused the application as it considers that the proposal does not meet the requirements of Class Q(a) in relation to the proposed curtilage. It also considers that the proposal does not meet the requirements of Q.1 criteria (i) as it considers that the level of demolition proposed to allow the proposed conversion would be excessive, and beyond what would be reasonably necessary to carry out the building operations allowed under class Q. The Council has not, therefore, considered the proposal against paragraphs Q.2(1).

Main Issues

8. The main issues are whether the proposed development would constitute permitted development in respect to Class Q(a) and paragraph Q.1(i); and, if the proposal is found to constitute permitted development, whether prior approval would be required and should be granted.

Reasons

Whether permitted development

9. The appeal building is a large rectangular shaped former agricultural building, which is supported off a concrete portal frame with concrete panels at low level to the walls and corrugated cement based sheets and Yorkshire boarding to the upper walls. The building sits within a farmstead with a range of agricultural structures and hardstanding. Prior approval for the residential conversion of two other agricultural buildings at the appeal site has recently been granted.
10. The proposal would see the conversion of part of the building to one large dwelling house with associated parking and residential curtilage. A section of the building would remain in agricultural use. Part of the building would be demolished.
11. The Council considers that the proposal would not meet the requirements of Class Q(a) in relation to the proposed curtilage, and would not be permitted development in this regard. It considers that the application site is significantly larger than the curtilage plan, and that the shared access for the proposal includes land which accommodates the existing access into the farmyard area, and outside of the curtilage area drawn around the appeal property and the other agricultural buildings which have been granted prior approval for residential conversions. Furthermore, it considers that the curtilage plan has very limited space externally to form a garden area and parking spaces and does not include space to manoeuvre vehicles.
12. Schedule 2, Part 3, Paragraph X of the GPDO defines 'curtilage' for the purposes of Class Q as: (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 submitted plans show an area of external space for a garden and parking area to serve the proposed conversion, which would be 178m². The proposed total building would have a gross external area of 180m².

13. In this respect, the proposed external space would be less than the land occupied by the agricultural building, and would therefore meet the requirements of the area that paragraph X defines as appropriate curtilage land around the building. Whilst the Council consider that the proposed external space would be limited, there is no requirement under Class Q for a proposed development to include a curtilage. It is for the applicant to decide whether to include a curtilage of any size, or at all. Whilst the GPDO specifies an upper limit for the land within the curtilage that can be subject to a change of use through Class Q, it does not specify a lower limit. The external space would be functional and usable, with adequate space for activities such as sitting or dining outside, playing and hanging washing. The space would be open, would benefit from sunlight, and would be easily accessible from the appeal building.
14. Furthermore, there is no requirement in the GPDO for the curtilage of a proposed conversion to include dedicated parking provision or space for the manoeuvring of vehicles. Moreover, as there is no requirement under Class Q for a proposed development to include a curtilage at all, it follows that an application need not include access, parking spaces or space for vehicular manoeuvres in order to be properly considered under Class Q. The plans submitted are clear in identifying the proposed curtilage which would be subject to the change of use.
15. The proposal, therefore, complies with the provisions of Q(a) of the GPDO. However, building operations would be necessary to convert the building to residential use, and the Council does not consider that the proposal would meet the requirements of Paragraph Q.1(i).
16. Paragraph Q.1(i) of the GPDO permits the installation or replacement of windows, doors, roofs, or exterior walls 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 works. The Planning Practice Guidance (PPG) provides further guidance in this regard, establishing that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.
17. The appellants included a Structural Survey Report with their application which concluded that the existing building is structurally capable of conversion for residential use. From the evidence before me and my observations when visiting the site, I have no reason to disagree. The existing foundation, concrete floor slabs, steel stanchions, steel roof beams, steel roof rafters and concrete wall would remain. However, the Council has raised concerns that the level of demolition proposed to allow the conversion would be excessive, and beyond what would be reasonably necessary to carry out the building operations allowed under Class Q.

18. A sizeable part of the structure would be demolished. However, partial demolition is not precluded by the GPDO and the extent of demolition works permitted within the Order is not defined. Furthermore, my attention has been drawn to a number of appeal decisions relating to Class Q, which have allowed for the partial demolition of agricultural buildings. Whilst each case must be considered on its own merits and site specific circumstances, and I have determined this case on the evidence before me and my own observations, I consider that there are some parallels with the proposal before me. Of particular note is an appeal in Bridgwater¹ which allowed for the extensive partial demolition of an agricultural building, which was far in excess of the demolition proposed in this development.
19. To my mind, taking into account the extent of the demolition together with the totality of works required, I do not consider that these would exceed what could reasonably be regarded as a conversion. Accordingly, it would comply with paragraph Q.1(i) of the GPDO in terms of the extent or scale of building operations being reasonably necessary to convert the building with respect to Class Q(b), and would constitute permitted development as set out under Schedule 2, Part 3, Class Q of the GPDO.

Whether prior approval is required and should be granted

20. The conditions set out in paragraph Q.2(1)(a) to (g) relate to certain details of the proposed development, including transport and highways, noise, contamination, flooding, location or siting, design or external appearance, and the provision of adequate natural light. Given my findings above I have assessed the proposal against Q.2 as required by the Order.
21. The site is served by an existing access onto the highway, and there would be parking spaces provided within the proposed curtilage. I therefore find that the development would be suitable in terms of transport and highway matters. Based on the evidence before me, the proposed conversion would not result in unacceptable noise impacts, contamination risk or flooding risk. I also have no reason to find that the location or siting of the building makes it otherwise impractical or undesirable to change from agricultural use to a dwellinghouse. Although part of the building would remain in agricultural use, I have no substantial evidence to suggest that the building would be used for undesirable activities such as the storage of silage or dangerous machines or chemicals. In my view any activities likely to occur in relation to the building would not constitute intensive farming and would not be such so as to cause undue harm to the living conditions of any potential future occupiers.
22. The design would create a contemporary living space whilst maintaining the agricultural impression of the existing building, and would respect the character and appearance of the area. The proposal would also provide adequate natural light to all habitable rooms of the dwellinghouse.
23. Therefore, based on the information before me and my observations on site, the proposed conversion would not result in unacceptable adverse effects on any of the matters listed in Q.2(1). For the above reasons, prior approval is granted for the development proposed.

¹ APP/V3310/W/17/3181124

Conditions

24. Paragraph Q.2(3) of the GPDO 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.
25. Further standard conditions are set out in paragraph W.(12) that requires development to be undertaken in accordance with the approved plans. A condition relating to the development being carried out only in accordance with the details and specifications submitted with the application is not therefore necessary.
26. 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 National Planning Policy Framework and relevant elements of the PPG. The additional conditions are set out in the schedule at the end of this decision.
27. The Council has suggested a pre-commencement condition, to which the appellants have agreed, requiring contamination investigation and necessary remediation. As this is related to one of the matters for which prior approval may be required, I have imposed this condition, subject to slight amendments. I have also imposed conditions regarding external materials and windows and doors, as these are relevant to the design and external appearance of the building.

Conclusion

28. For the reasons given, I conclude that the appeal should be allowed, and prior approval is granted subject to conditions.

L C Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii) the site has been remediated in accordance with the approved measures and timescale; and
 - iii) a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

 - i) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 2) No development, other than demolition and/or site clearance works shall take place until details of or samples of all materials and finishes to be used for the external elevations and roof have been submitted to and approved in writing by the local planning authority in writing. The development shall be carried out in accordance with the approved details or sample materials.
- 3) Prior to their installation, details of new windows and doors, their finished colour and recess shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed details.

*****END OF SCHEDULE*****