



Appeal Decisions

Site visit made on 1 July 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2024

Appeal A Ref: APP/R0660/X/23/3327844

Agricultural building at land east of, Hall Green Lane, Somerford Booths

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Bell Estates Partnership against the decision of Cheshire East Council.
 - The application ref 23/1957C, dated 23 May 2023, was refused by notice dated 28 July 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the change of use of agricultural building and land within its curtilage to 2 dwellings and building operations.
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Appeal B Ref: APP/R0660/W/23/3327846

Land East of Hall Green Lane, Somerford Booths

- 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.
 - The appeal is made by Bell Estates Partnership against the decision of Cheshire East Council.
 - The application Ref is 23/2189C.
 - The development proposed is the change of use of an agricultural building to single dwellinghouse.
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Decision

Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Appeal B

2. 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 (GPDO) for the change of use of an agricultural building to a dwellinghouse at Land East of Hall Green Lane, Somerford Booths in accordance with the details submitted pursuant to Schedule 2, Part 3, Class Q of the GPDO including drawings numbers P003 Rev B – Proposed Site and Location Plan and P010 Rev B – Proposed Plans and Elevations.

Applications for costs

3. An application for costs is made by Bell Estates Partnership against Cheshire East Council in relation to both appeals. This application is the subject of a separate Decision.

Preliminary Matters

4. I have used the description of the development for Appeal A as set out in the appeal form. This is more accurate and concise than the description contained within the application form.
5. Following the submission of the appeals, an appeal¹ was allowed in relation to a prior approval application for the change of use of the appeal building to dwellinghouses. The parties have been given the opportunity to comment on this.
6. Amendments to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) on 21 May 2024². However, these have effect subject to transitional provisions including allowing a developer to make an application for a determination as to prior approval in relation to previously permitted development under Class Q until the end of 20th May 2025. Accordingly, I have determined the appeal on the basis of the previously permitted development under Class Q (ie the pre-21 May 2024 amendments).
7. Both appeals relate to the same building and appellant. However, the proposed developments are different in that Appeal A is for two dwellings whereas Appeal B is for one. Given the issues pertaining to each case are similar, for the sake of avoiding duplication, I have determined them in a single decision notice.

Appeal A

Main Issue

8. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

9. An application for prior approval pursuant to Class Q of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 was made under reference 23/0949C on 9 March 2023. The appellant confirms the Planning Portal confirmed the application was also received by the Council on 9 March 2023.
10. The Council sent a letter to the appellant on 14 March 2023 stating the application was invalid and requested existing elevations and floor plans to scale and a CIL form.
11. Schedule 2, Part 3, Paragraph W of the GPDO sets out what an application to a local planning authority for a determination as to whether the prior approval of the authority will be required must be accompanied by. There is no

¹ Appeal ref: APP/R0660/W/23/3324697

² Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2024/579 art.3

requirement for existing elevations or floor plans, nor is there a requirement for a CIL form to be submitted.

12. Accordingly, based on the evidence before me, the application was valid on 9 March 2023. As the Council subsequently determined the application on 12 May 2023, the 56-day period in which the Council had to notify the appellant of their decision had expired. Therefore, prior approval is deemed to be granted. However, in order for the development to be permitted development it needs to satisfy the limitations of Class Q.
13. The GPDO states at paragraph Class Q that permitted development is 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 Order; and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3(dwellinghouses) of that Schedule.
14. Subparagraph Q.1 (i)(i) states development under Class Q(b) is not permitted if it would consist of building operations other than the installation 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.
15. Planning Practice Guidance (PPG) recognises that for a building to function as a dwelling some building operations which would affect the external appearance of the building should be permitted. It goes on to state that internal works are not generally development and for the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q. However, the works that are undertaken must not exceed works necessary to convert the building, as opposed to it being a fresh build, as set out in *Hibbitt v SSCLG and Rushcliffe BC* [2016] EWHC 2853.
16. Whilst the drawings include an annotation that the walls will be standing seam zinc, the appellant confirms the existing cladding will be retained and painted. I have determined the appeal on the basis that the existing metal sheet clad walls would be retained and painted. In addition, the steel frame and roof purlins will be retained. The existing roof sheeting will be replaced with a standing seam roof and a new concrete floor will be installed.
17. The Structural Report carried out by Mark Edwards Associated Ltd, dated 20 January 2023, concludes the building is structurally capable of being converted without substantial structural alteration or demolition. An addendum to the Structural Report, dated 22 May 2023 goes on to state that the side cladding and supporting side rails will remain in position during the works; new openings will require small section steel or timber edge support; and, although the existing roof covering will be replaced with a standing seam roof, there will be no need to remove the existing roof support structure.
18. There would be openings created in the exterior walls to accommodate large, glazed areas. However, the two gable openings would be similar in size to the existing openings, and the six side openings (three on each side) would be in scale with openings typically found on such agricultural buildings. Given the

lack of existing openings in the side elevations, the proposed openings are reasonably necessary in the interest of providing adequate light and outlook to ensure suitable living conditions for future occupants.

19. Based on the evidence before me and my own observations on site, the proposed works fall within those permitted by Class Q and do not go beyond what is reasonably necessary for the conversion of the building to enable it to function as a dwellinghouse. They would not amount to a fresh build. I note my findings are similar to the Inspector's conclusion in appeal APP/R0660/W/23/3324697.
20. I find therefore, the proposed development accords with the limitations set out in paragraph Q.1(i) in pursuance of Q(a) and Q(b) of the GPDO and therefore would be permitted development. As the Council did not notify the appellant of their decision within the requisite 56 day period, prior approval is deemed to be granted. I therefore need not go on to consider the prior approval matters.

Other Matters

21. The appellant argues that if I allow the appeal, the three-year period for the completion of the development set out in condition Q2(3) of the GPDO should start from the date of this decision.
22. Although the Council did not notify the appellant of their decision within the requisite 56 days, they did issue a decision shortly after, which stated they refused the application. Notwithstanding I have found prior approval was deemed to have been granted, the appellant took the rational approach of first seeking confirmation as to whether deemed prior approval was indeed granted, which has led to this appeal. It was reasonable for the appellant not to commence any works. Given the Council also consider the development is not permitted development, I have also determined whether it is in the consideration of this appeal. Consequently, I find that it would be reasonable for the period for completion as set out in condition Q2(3) to commence from the date of this decision.

Conclusion on Appeal A

23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use of agricultural building and land within its curtilage to two dwellings and building operations is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

Main Issue

24. The main issue is whether the proposed change of use constitutes permitted development pursuant to Class Q of Part 3 of Schedule 2 to the GPDO, having regard to the extent of the works proposed, and the effect of the proposal on the appearance of the building.

Reasons

Extent of Works

25. Notwithstanding the difference in the number of dwellings proposed, the proposed operational development under Appeal B is similar to Appeal A. The material differences are the internal layout of the building and the number, size and arrangement of openings. The glazed gable openings would be slightly narrower than those in the Appeal A development. The north elevation would be largely the same with three large openings, albeit slightly different in size to the Appeal A development. The south elevation would be noticeably different with only one large glazed opening, compared to Appeal A development's three, and five smaller windows and a door.
26. Overall, the proposed openings would occupy a smaller proportion of the exterior walls of the existing building than the Appeal A development. Consequently, I find the proposed works fall within those permitted by Class Q and do not go beyond what is reasonably necessary for the conversion of the building to enable it to function as a dwellinghouse. They would not amount to a fresh build.

Appearance

27. As I have found the proposal would be permitted development, I now consider the prior approval matters. The Council raise no objection regarding transport and highways impacts of the development, noise impacts of the development, contamination risks on the site, flooding risks on the site, or whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987. Based on the evidence before me and the observations I made on site, I find no reason to conclude otherwise.
28. The existing building has concrete block and timber clad walls and a sheet clad roof. There are two large openings, one on each gable. The simple, utilitarian design and materials are typical of an agricultural building of this nature.
29. The proposal would create a number of new openings in the side elevations and utilise the existing ones, albeit altering their shape and size. Whilst some of these openings are large, they nevertheless reflect the proportions of the building and the existing openings. I do not consider the increase in the number of openings, their size or their arrangement would unduly detract from the agricultural appearance of the building. Overall, the proposed development would not have a significantly harmful effect on the traditional agricultural appearance of the building.

Conditions

30. The appellant should note that the GPDO requires at paragraph Q.2(3) that the development must be completed within a period of 3 years from the date that the prior approval is granted. A number of other conditions apply to such development, including paragraph W(12) of the GPDO which requires that the conversion is carried out in accordance with the details provided in the application.

Conclusion on Appeal B

31. For the reasons given above, I find that the proposed change of use is permitted development under Class Q and as such, having considered all matters raised, the appeal is allowed and approval granted.

A Walker

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 May 2023 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed works, as shown on drawing numbers P010 Rev B - Proposed Plans and Elevations and P003 Rev B - Proposed Site and Location Plan fall within the scope of works permitted under Class Q, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and prior approval is deemed to be granted. The proposed development would therefore be permitted development.

Signed

A Walker

Inspector

Date: 6 August 2024

Reference: APP/R0660/X/23/3327844

First Schedule

Change of use of agricultural building and land within its curtilage to 2 dwellings and building operations.

Second Schedule

Agricultural building at land east of, Hall Green Lane, Somerford Booths
IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 6 August 2024

by **A Walker MPlan MRTPI**

Land at: Agricultural building at land east of, Hall Green Lane, Somerford Booths

Reference: APP/R0660/X/23/3327844

Scale: Not to Scale

