



Appeal Decision

Site visit made on 23 July 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2024

Appeal Ref: APP/U2370/W/24/3342103

Robinsons Farm, Staynall Lane, Hambleton, Lancashire, FY6 9DT

- 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 David Leach against the decision of Wyre Borough Council.
 - The application Ref is 23/00678/COUQ.
 - The development proposed is prior approval for proposed change of use of agricultural building to two dwellings at Robinson's Farm, Staynall Lane, Hambleton, Poulton le Flyde.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the appeal form, as it was not detailed on the application form.
3. The appellant has submitted amended plans as part of their appeal. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a 'substantial difference' or a 'fundamental change' to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
5. In this instance, the proposed revisions are seeking to provide clarification regarding the proposed curtilage, and to remove the external ramp and steps and external cladding. I do not consider that the amendments would lead to the scheme being substantially different to that considered at the application stage. In these circumstances, I am satisfied that my consideration of the proposed amendments would cause no injustice to any party were I to consider them as part of the appeal documentation.
6. Moreover, I note that the Council's Statement of Case refers to the amended plans, although it is clear that had they been submitted during the

- determination of the application, they would not have fully overcome the Council's concerns regarding the proposal.
7. On 21 May 2024, Statutory Instrument 2024 No 579 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 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.
 8. 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.
 9. 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 Q1 and Q2.
 10. 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 it the proposal does not meet the requirements of Q1(h) as it considers that the design would lead to the building extending beyond the external dimensions of the existing building. The Council also consider that the proposal does not meet the building operation requirements of Q(b) and Q1(i) as it would include ramps and steps, and insufficient detail relating to gaps in the cladding of the upper walls, and of the roof and rooflights.
 11. Paragraph Q2.(1) lists conditions under which the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to the impact of the development on: (a) transport and highways; (b) noise; (c) contamination; (d) flooding risks; (e) whether the location or siting of the building would make it otherwise impractical or undesirable for the building to be used as a dwellinghouse; and (f) the design or external appearance of the building. As the Council did not consider the proposal to be permitted development, it did not provide a determination in regard to prior approval. However, the Council's Statement of Case indicates that they would refuse prior approval with regards to Q2(a) (d) and (e).

Main Issues

12. The main issues are, therefore, whether the proposed development would constitute permitted development in respect to Class Q(a) and Paragraph Q(b) Q1(h) and Q1(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

13. The appeal building is an agricultural building of steel framed construction, with steel portal frames, supporting a cement profile sheeted, pitched, timber purlin roof and with a concrete slab floor. The elevations consist of lower concrete walls with timber cladding to the upper sections of the gables and elevations. Each gable has a gated entrance. The front elevation has an open section between a low concrete wall and the upper timber section.
14. A smaller agricultural building is located alongside the appeal building, which is situated in a field, with an area of grass and rough stone to the front of the building. Access is off an unclassified road. The proposal would see the conversion of the building to two single-storey dwellings.
15. The Council consider that the proposal would not meet the requirements of Class Q in relation to the proposed curtilage, and would not be permitted development in this regard. An amended plan was submitted during the appeal process which distinguished the area to be used as amenity space from the shared access area.
16. 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 amended plans show an amenity space which the Council suggest would measure 188m² whilst the area occupied by the building would be approximately 308m².
17. In this respect, the proposed amenity 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. However, the Council consider that if the shared access was included as part of the curtilage, the curtilage would measure approximately 326m².
18. However, there is no requirement under Class Q for a proposed development to include a curtilage at all. That being the case, it follows that an application need not include access in order to be properly considered under Class Q. The amended plans are clear in identifying the proposed curtilage which would be subject to the change of use.
19. 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(b), Q1(h) and Q1(i).
20. Class Q1(i) states that development under Class Q(b) can consist of building operations including the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to an extent reasonably necessary for the building to function as a dwellinghouse.

21. The overarching provision of Class Q is that the operations must be reasonably necessary to convert the building. The Planning Practice Guidance (PPG) states that it is not the intention of Class Q to allow rebuilding that would go beyond what is reasonably necessary for the conversion of the building to residential use. The PPG also asserts therefore that 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.
22. It is established in case law¹ that if the works go beyond what amount to a conversion, and represent a rebuild, then the scheme would fail at the first hurdle. What represents a conversion or rebuild is not defined and thus is a matter of planning judgement.
23. The Council considered the proposal to be non-compliant with Q1(h) as it would result in the external dimensions of the proposed building extending beyond the external dimensions of the existing building, through the cladding of the lower block walls. The amended plans remove the cladding to the existing concrete plinth. In addition, the amended plans indicate that the proposed external ramp and steps, which would have been outside the provision of Q(b) and Q1(i) in relation to the conversion of the building, would be replaced by internal steps and lifts. The Council has confirmed that these amendments overcome these aspects of their refusal reasons, and from the evidence before me and my observations on site I see no reason to disagree.
24. However, the Council consider that insufficient detail has been provided in relation to the gaps in the cladding of the upper walls, and of the roof and rooflights, to establish whether the proposal complies with Q(b) and Q1(i) in relation to the conversion of the building and the building operations.
25. The appellant's appeal statement highlights that there would be black coloured breather membrane behind the existing cladding, and that insulation and blockwork walls would be constructed on the inner face of the existing walls. This provides some detail in relation to the gaps in the cladding. The appellant has also indicated that the proposed roof would not exceed the external dimensions of the existing building, and therefore it is irrelevant whether the existing roof is replaced or adapted.
26. However, whilst Class Q1(i) does allow for the installation or replacement of roofs, I disagree with the appellant that whether it is a replacement or adaptation is irrelevant. Whilst the works set out within Class Q can be extensive, the extent of fabric that is to be retained and used, along with the amount of new build elements that are required in order to facilitate the conversion, needs to be assessed as a whole rather than in isolation. As such, it is necessary to assess whether the totality of works would include such a significant level of new construction, demolition or new structural elements as to be so extensive that they would be beyond the normal understanding of conversion. In other words, it would not amount to a substantial re-build or fresh build.
27. Furthermore, I note that the plans indicate that the existing concrete plinth along the front elevation of the agricultural building would be retained. However, there is currently a gap between the concrete plinth and the existing

¹ Hibbitt v Secretary for Communities & Local Government & Rushcliffe BC [2016] EWHC 2853 (Admin)

cladding. The plans do not indicate how or with what materials this gap would be filled.

28. I acknowledge that the appellant's submitted Structural Report indicates that the building is suitable for conversion to a dwelling without any significant rebuild and that the majority of the external elements could be retained. However, without a full and clear account of the elements of the building which would be retained, I do not consider that the full extent of the works can be accurately assessed to confidently conclude that the works would not go beyond the normal understanding of conversion.
29. In addition, the amended plans show the existing ground level as 6.4m AOD, but on the proposed site plan this is detailed as 7m AOD. This apparent discrepancy is not addressed by the appellants in their submission. This could indicate that the ground level would be raised, which would be outside the building operations permitted by Class Q. Insufficient information has been provided as to why raising the ground level would be required.
30. In making my assessment of the proposal I am conscious of Paragraph W of Schedule 2, Part 3 of the GPDO which states that 'the local planning authority may refuse an application where, in the opinion of the authority (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question'.
31. Consequently, I conclude that whilst the proposal complies with the provisions of Q(a) of the GPDO and would meet the requirements of Paragraph Q1(h), insufficient information has been provided to demonstrate that the proposed development would not require building operations that would exceed those permitted under Paragraphs Q(b) and Q1(i). It follows that, based on the evidence before me, I cannot find that the appeal scheme is development permitted under Schedule 2, Part 3, Class Q of the GPDO.

Whether prior approval is required and should be granted

32. Given my conclusion that, based on the evidence before me, the proposed development would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required, as it would not alter the outcome of the appeal.

Conclusion

33. For the reasons given above, I conclude that the proposed development is not permitted development under Schedule 2, Part 3, Class Q of the GPDO and the appeal is therefore dismissed.

L C Hughes

INSPECTOR