

Appeal Decision

Site visit made on 4 September 2024

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2024

Appeal Ref: APP/Z3825/W/23/3330934

Raidons, Nutbourne Lane, Nutbourne, West Sussex, RH20 2HS

- 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 Dave Blaber against the decision of Horsham District Council.
 - The application Ref is DC/23/1383.
 - The development proposed is Prior Notification for Change of Use of Agricultural Building to residential (C3) to form 1 no dwellings - Class Q.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal relates to a prior approval notification made under Article 3(1), Schedule 2, Part 3, Class Q, of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO).
3. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024/579 came into force from the 21 May 2024, which involved several amendments to Class Q of the GPDO, including development that could be permitted and relevant limitations on the permitted development rights. However, the amendments to Class Q included transitional arrangements, such that any application or appeal made before 21 May 2024 should continue to be determined against the previous version of Class Q of the GPDO. I have therefore proceeded on this basis and herein reference to the GPDO will be in relation to the 1 August 2020 version of the GPDO.
4. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters.

Background and Main Issue

5. The permitted development rights under Article 3(1), Schedule 2, Part 3, Class Q(a) and Q(b) of the GPDO allows for the change of use of an

agricultural building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) together with building operations which are reasonably necessary to enable the conversion of the building. This is subject to various limitations and conditions as set out in paragraphs Q.1 and Q.2 of that Class.

6. The Council has raised issue with the appeal scheme complying with the exclusions set out at Paragraph Q.1(i) regarding the nature and extent of the building operations proposed.
7. I also understand that the appellant has previously sought prior approval (ref: DC/22/1968) to convert the appeal building to a dwelling. The Council refused that previous application on the basis that it had not been demonstrated that the building was capable of conversion without new structural elements, and that the proposed building operations were not shown to be reasonably necessary for it to function as a dwellinghouse.
8. Since the determination of application ref: DC/22/1968, the appellant has undertaken works involving the reconstruction of the northern section of the subject building. Main parties dispute whether these works amount to development¹. Nonetheless, the Council contend that the works undertaken have been necessary to facilitate (either knowingly or unknowingly) the building's conversion to a dwellinghouse. Accordingly, the Council argue that the current proposal cannot be granted prior approval, as the previous works began before the developer's latest application to the local planning authority for a determination as to whether prior approval was required.
9. Accordingly, the main issue is whether the proposal is permitted development, in particular:
 - i) whether the building operations are reasonably necessary for the building to function as a dwellinghouse having regard to Class Q.1(i); and
 - ii) if so, whether the development began before an application was made to the local planning authority for determination as to whether prior approval was required, having regard to Class Q.2(1).

Reasons

Building Operations

10. The GPDO states at paragraph Q.1(i)(i) that development under Class Q(b) is not permitted if it would consist of 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 dwelling house. Additionally, Q.1(i)(ii) allows for partial demolition of a building to the extent reasonably necessary to carry out building operations under Q.1(i)(i).
11. Paragraph 105 of the Planning Practice Guidance (PPG) 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

¹ As defined under Section 55 of the Town and Country Planning Act 1990 (as amended).

permitted development rights 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.

12. 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. My attention has though been drawn to the Hibbitt judgement² which relates to the difference between conversions and rebuilding dealt with under Class Q.
13. The Hibbitt case makes the distinction that the level of works needed to alter an agricultural building to enable it to be used as a dwelling could be of such a magnitude that it would be tantamount to a new build, or rebuild, as opposed to a conversion. This is important because if a development does not amount to a conversion it would fail to be development permitted under Class Q. Furthermore, Hibbitt reinforces that it is a matter of planning judgement as to whether the level of works involved would still constitute a conversion.
14. Extremely limited information has been provided as to the level of works that are proposed to facilitate the use of the appeal building as a dwelling. The appellant sets out that the works would only involve building operations that are each outlined as being permissible at Paragraph Q.1(i)(i) (and as set out within associated Council guidance). Individually, the installation or replacement of the various elements of the building may be permissible. However, given the case law established by Hibbitt, it remains necessary to consider the totality of the works involved and whether it would still amount to a conversion of the building, as opposed to a fresh build.
15. In this instance there is no suitably detailed information before me as to the extent of the existing building's fabric that would be retained or replaced, or the precise nature of the works that are proposed. Indeed, the appellant's submitted drawings and design and access statement are extremely vague and unclear on these matters. Furthermore, no detailed structural information has been provided by the appellant. Therefore, despite my observations on site, I cannot suitably determine the structural integrity of the existing building, or whether new structural elements/strengthening works would be required to make the new dwelling structurally sound and compliant with current regulations.
16. I note the appellant's suggestion that the Council's planning officer has not engage with a structural engineer or professionals within the Council's building control department to assess the ability for the building to be converted. However, the onus is on the appellant to demonstrate that the appeal building is structurally capable of being converted and that it benefits from the permitted development rights established under Class Q.
17. In the absence of detailed information as to the structural integrity of the building and the full extent of works that are required to facilitate its use as a dwellinghouse, I am unable to conclude that the building operations proposed

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

are reasonably necessary for the building to function as a dwellinghouse. I therefore cannot find the scheme to comply with paragraph Q.1(i) of the GPDO. Accordingly, the proposal does not benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the Order.

Whether the development had already begun

18. Given my above findings, there is no need for me to consider whether the previous works undertaken to the appeal building amounted to development or would breach the condition established at Class Q.2(1) of the Order.

Other Matters

19. The appellant has provided copies or extracts of several appeal decisions to support his case. I do not have the full background context of these decisions. Still there remain broad similarities with the appeal scheme in that they examine the issue of what constitutes permitted development, notably, whether building operations are reasonably necessary. However, the examples relate to a variety of individual case judgements and cover a range of building specific operations. Additionally, from my reading of the decisions, it is clear that there were differences in the level and detail of supporting information provided alongside those other schemes. In any event, I have determined the appeal on its own merits based on the information before me.
20. I note the appellant's comments in relation to the potential benefits of the proposal, however, such matters fall outside the scope of the prior approval process.

Conclusion

21. For the reasons given above, I find that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. The appeal is therefore dismissed.

Lewis Condé

INSPECTOR