

Appeal Decision

Site visit made on 20 August 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2024

Appeal Ref: APP/A0665/W/24/3342362

Brook Cottage, Willington Road, Tarvin, Chester CH3 8NL

- 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 Jeremy Lloyd against the decision of Cheshire West and Chester Council.
 - The application Ref is 23/03972/PDQ.
 - The development proposed is change of use of agricultural building to residential use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development within the above banner heading is taken from the appeal form and Council's decision notice as the application form did not contain a description of the proposal.
3. The appellant has submitted an amended location plan which shows a redline around the building only. The appeals procedural guide¹ makes it clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority (LPA), and on which interested people's views were sought. Having regard to the principles established in *Holborn Studios Ltd*², 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.
4. In this case, the amended plan and red edge indicates a much smaller curtilage. As such, this represents a fundamental change to the proposal and it is not the scheme applied for and considered by the LPA. On that basis, I cannot be certain that no parties would be prejudiced were I to take the

¹ Procedural Guide: Planning Appeals – England (2024)

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

amended plan into account. In these circumstances, I do not consider it appropriate to accept these plans and I have therefore determined the appeal based on the plans submitted in support of the application and upon which the Council's decision was made.

Background and Main Issues

5. 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.
6. 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.
7. 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.
8. 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 building operation requirements of Q(b).
9. 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. Whilst the Council did not consider the proposal to be permitted development, it went on to consider that the proposal would not be unacceptable against the prior approval requirements.
10. Consequently, the main issues are, therefore, whether the proposed development would constitute permitted development in respect to Class Q(a) and Q(b) and, if the proposal is found to constitute permitted development, whether prior approval would be required and should be granted.

Reasons

Whether the proposed development would be permitted development

Curtilage

11. The Council consider that the proposal would not meet the requirements of Class Q in relation to the extent of the proposed curtilage and therefore it would not be permitted development in this regard.
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.
13. A submitted plan, which shows the hard and soft landscaping around the proposed residential unit, includes an area of land which is extensive and significantly larger than the land area occupied by the barn. While it is suggested that this plan is illustrative only, the other plans submitted with the application show a similar proposed curtilage around the barn. I therefore find that for the purposes of Class Q, the proposed curtilage is larger than the land occupied by the building. The proposal would not therefore be permitted by Class Q(a) of the GPDO.

Building operations

14. The appeal building is a Dutch style barn (the barn) that has a traditional, largely open fronted appearance, with a curved roof, set amongst other farm buildings within the site, including a farmhouse. The existing buildings are in a varying state of disrepair, including the barn, which is generally in a poor condition.
15. The barn is constructed with a steel frame, clad with corrugated metal sheets to three sides and to the roof. The northern elevation is largely open, with an annex attached to the rear. The annex is constructed of timber with low level blockwork and open elements above and a metal mono pitched roof.
16. The GPDO states at paragraph Q.1(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.
17. The Planning Practice Guidance (PPG)³ 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.
18. 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

³ Paragraph: 105 Reference ID: 13-105-20180615

Hibbitt Judgement⁴. 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.

19. The Hibbitt case suggested that an agricultural building may be so skeletal and minimalist that the works needed to alter it to be used as a dwelling would be of such a magnitude that it would be tantamount to a new build or rebuild as opposed to a conversion. Furthermore, Hibbitt reinforces that it is a matter of planning judgement as to whether the level of works involved would still constitute a conversion.
20. A 'Structural Condition Survey' (the structural report) has been submitted but it is largely limited to a visual inspection only. Therefore, despite the suggestions by the appellant that the proposals would reuse the existing roofing and walls to provide modern living arrangements, there is limited evidence before me of the full level of works that would be required to complete the walls, including foundations, and the roof structure.
21. The structural report also identifies that there is evidence of significant corrosion in several of the steel columns where they meet ground level. Therefore, the structural report recommends that further investigations are undertaken. As such, I am mindful that new steels may also be required to ensure that the steel structure would be strong enough to take the loading associated with the external works necessary to create a dwelling.
22. The replacement of the steel structure, in part or in full, as well as a new building envelope, including new walls, roof structure, new door, and window openings, as well as a new insulated solid floor, would result in a significant amount of new construction. In addition, the proposal includes the formation of a first-floor level within the main barn element, which is also likely to require additional structural elements.
23. I acknowledge that works will be carried out within the existing footprint of the building, which would not exceed 465 square metres. However, on the limited evidence before me and having regard to the likely scale and nature of the proposed works and established case law, I find that the appeal building is not capable of conversion to a residential use without comprehensive rebuilding works.
24. My attention has been drawn to other 'Dutch Barn' style buildings that have been converted into residential dwellings. The full details of these cases have not been provided but the evidence suggests that these examples were not carried out under Schedule 2, Part 3, Class Q of the GPDO. Even if they were, it is not known what level of building operations were reasonably necessary to convert the buildings and there is limited evidence to demonstrate that any of the schemes provided are comparable to the appeal proposal. Given this, these examples do not add weight in favour of the scheme. Therefore, as I am required to do, I have determined the case before me on the site-specific circumstances and on its own merits.

⁴ Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin)

25. Accordingly, for the above reasons, I find that the proposed development would go beyond building operations reasonably necessary to convert the building into a dwellinghouse. As such it would fail to comply with paragraph Q.1(i) of the GPDO and would not benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the GPDO.

Whether prior approval is required and should be granted

26. Given my conclusion that 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 for matters such as the design or external appearance of the building, as it would not alter the outcome of the appeal.

Other Matters

27. I have paid regard to the appellant's comments that a further refusal would result in the property falling into disrepair and dereliction inciting vandalism and antisocial behaviour. As such, there would be benefits associated with an improvement to security, and ground level surveillance.
28. The proposal would also provide a new house and provide associated benefits during the construction and occupancy phases. Whilst the National Planning Policy Framework seeks to significantly boost the supply of housing, this is dealt with by the regulations which are generally permissive of this kind of development. The regulations stipulate that in determining such applications, decision makers can only consider a narrow set of criteria. Given this, although the proposal would lead to identified benefits these are not matters which are material to my decision.
29. I also acknowledge that Green Belt or AONB designation restrictions do not apply here and are outside the scope of matters that can be considered in this case.

Conclusion

30. 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 should be dismissed.

N Bromley

INSPECTOR