



Appeal Decision

Site visit made on 21 October 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/F2605/W/24/3337558

Old Ashtree Poultry Unit, Lopham Road, Kenninghall, Norfolk NR12 8TS

- 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 BJ & PM Gooderham against the decision of Breckland Council.
 - The application Ref is 3PN/2023/0016/UC.
 - The development proposed is described as the "prior approval for proposed change of use and conversion of an agricultural building to 5no. residential dwellings (Use Class C3) including part demolition within Class Q of Part 3, of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address on the application form differs to that used on the appeal form, appeal documentation and Council's decision notice. Given that the appellants have adopted the address used on the Council's decision notice, I have used that version in the banner heading above.
3. The appellants names on the application form appear as Mr G Gooderham of BJ and PM Gooderham, whereas the names on the appeal form are Mr BJ and PM Gooderham. The appellants have clarified the correct names, which I have used in the banner heading above.
4. The above legislative provisions were updated on 21 May 2024. However, I am required to determine this appeal in accordance with those that were in force at the time the original application was determined. All references to the GPDO in this decision therefore relate to the version that was in force at that time.
5. The Council have since adopted the Breckland Design Guide April 2024 and undertaken a partial update of the Breckland Local Plan 2019. While both parties have had opportunity to comment and the policy referred to by the Council in the decision notice remains unchanged, in prior approval cases there is no requirement to have regard to the development plan as there would be for development requiring planning permission.

Main Issue

6. The permitted development right under Article 3, Schedule 2, Part 3, Class Q(a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) allows the change

of use of an agricultural building and any land within its curtilage to a dwelling house together with building operations reasonably necessary to enable the conversion, subject to various limitations and conditions as set out in paragraphs Q.1 and Q.2 of that Class.

7. The Council's first reason for refusal states that the proposal would go beyond what is reasonably necessary for the building to function as dwellinghouses. The Council have then proceeded to determine the prior approval details submitted in respect of Q.2(1)(a) relating to highway impacts of the development and raised concerns in relation to foul drainage disposal and mitigation measures with regard to Green Infrastructure Recreational Avoidance Mitigation Strategy (GIRAMS).
8. Therefore, the main issue is whether the works proposed would go beyond what is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses).

Reasons

9. Class Q.1(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. Furthermore, Class Q.1(i) also allows the partial demolition to the extent reasonably necessary to carry out these operations.
10. The Planning Practice Guidance (PPG) states that the right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are reasonably necessary to convert the building, which may include the installation or replacement of windows, doors, roofs and exterior walls. However, 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.
11. The PPG also refers to the Hibbitt¹ judgement, in which it was held that the building must be capable of conversion to residential use without operations amounting to complete or substantial re-building of the pre-existing structure. Whether or not the proposed works go beyond the scope of conversion is a matter of planning judgement with reference to the particular circumstances of the case.
12. The submitted plans show that the appeal proposal includes the partial demolition of the appeal building, the remainder of which would then be subdivided into five dwellings. The building is formed from a timber frame, with fibre cement cladding on the external walls and fibre cement sheeting to the roof.
13. The Revised Engineers Report, Rev 02, dated 12 June 2023, confirms that the existing fibre cement roof and wall panels, timber frame, brickwork plinth and concrete floor slab would be retained. It concludes that the appeal building is

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

of reasonable condition and is suitable for conversion to domestic use, subject to a number of repairs and recommendations.

14. However, the Council has raised concerns that the fibre cement sheeting, present on the roof and walls, contains asbestos. The evidence refers to a Contaminated Land Report, submitted in support of a previous application² to develop the site. The Council asserts that the report indicates the roof and walls may have measurable asbestos content.
15. The appellants highlight that the Contamination Land Officer raised no objections to the appeal scheme. However, the comments and recommended condition relate to land contamination, not the appeal building or its associated cladding.
16. No further substantive information has been provided which confirms whether asbestos is present within the cladding of the appeal building, or not. Moreover, should asbestos be present, it is unclear as to its extent and whether it would be necessary to replace some, or all, of the wall and roof cladding.
17. Therefore, in the absence of such information and on the balance of probabilities, I cannot reasonably conclude that the building operations would be reasonably necessary to convert the appeal building.
18. I have considered the submitted appeal decisions³, which have a different locational context to the appeal site. In each of the cases, development was allowed as each of the Inspectors, based on the evidence before them and the respective condition of the appeal buildings, were satisfied that the proposed building operations, including partial demolition, were reasonably necessary to convert the buildings to a residential use. Given that an assessment of whether or not the proposed works go beyond the scope of conversion is typically a matter of planning judgement with reference to the particular circumstances of the case, these cases are not directly comparable. In any case, I have determined the appeal scheme on its merits.
19. Consequently, it has not been adequately demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development Class Q.

Other Matters

20. With regard to the Council's reason for refusal Nos 2 and 3, given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider these matters further, or assess whether or not prior approval would be required, as it would not alter the outcome of the appeal.
21. The Council also refused the application on the basis that a Unilateral Undertaking (UU) had not been submitted in order to secure contributions, relating to the GIRAMS, to mitigate the recreational impact of the development on protected habitat and wildlife sites. While the appellants contend that a UU was submitted to the Council, Article 3(1) of the GPDO grants planning

² Planning reference: 3PN/2022/0037/UC

³ Planning appeal references: APP/J3720/W/17/3179581, APP/J3720/W/20/3256220, APP/J3720/W/21/3271707 and APP/J3720/W/22/3300215

permission for the classes of development set out in Schedule 2, subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017.

22. Regulation 75 states that it is a condition of any planning permission granted by a general development order that development which, among other things, is likely to have a significant effect on a European site, must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77.
23. Neither the GPDO, nor Regulations 75-78, prescribe the sequencing of prior approval and Regulation 77 applications. The requirements of both procedures must be met before the development can be lawfully begun, but it is not the case that the appellants must have written notification of a Regulation 77 approval before seeking prior approval, or vice versa. Moreover, the Regulation 77 application would be for the local planning authority to determine, outside the scope of the prior approval process. In view of this and having regard to my findings on the main issue, there is no need for me to consider this matter further.
24. The appeal building is currently empty. Should the appeal be successful, the appellants have indicated that the site as a whole will cease to be used for poultry production. The appellants assert that neighbouring properties would prefer a change of use, as it would reduce agricultural vehicle movements and associated activities and deliver an amenity improvement. While this may be, it has not been adequately demonstrated that the proposal is permitted development under Class Q.

Conclusion

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

S Pearce

INSPECTOR