



Appeal Decision

Site visit made on 24 September 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/U1105/W/24/3344843

Higher Berry Farm, Road From Claponmill To Three Elms Cross, Clyst St Lawrence, Devon EX15 2NW

- 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 Brian Willis against the decision of East Devon District Council.
 - The application Ref is 23/2418/PDQ.
 - The development proposed is to convert existing farm building to a residential dwelling along with the installation of windows, doors, internal works, and services to enable the building to function as a residential unit.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to convert existing farm building to a residential dwelling along with the installation of windows, doors, internal works, and services to enable the building to function as a residential unit at Higher Berry Farm, Road From Claponmill To Three Elms Cross, Clyst St Lawrence, Devon EX15 2NW in accordance with the application 23/2418/PDQ, the details submitted with it, including drawing nos P01 P1 (Site Location & Block Plans; P04 P1 (Proposed Floor & Roof Plans); and P05 P2 (Proposed Elevations).
2. The approval is subject to the condition set out by Paragraph Q.2(3) of Schedule 2, Part 3, Class Q of the above Order in that development must be completed within a period of 3 years from the date of this decision as well as the provisions specified in paragraph W.

Preliminary Matters

3. I have used an amended description of development above as it was not clearly detailed on the application form. The description is based on that used in the Decision Notice, but amended to provide greater clarity on the associated development proposed. This amended description has been agreed by both main parties.
4. On 21 May 2024, Statutory Instrument 2024 No. 579 came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the 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 that the original application was submitted in November 2023. All references to the

GPDO in this decision therefore relate to the version that was in force at that time.

Background and Main Issue

5. Schedule 2, Part 3, Class Q of the GPDO permits development consisting of 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 (dwelling houses) of the Schedule of the Use Classes Order 1987 (as amended), and the building operations reasonably necessary to convert the building.
6. Schedule 2, Part 3, Section W of the GPDO sets out the prior approval process. It states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified as being applicable to the development in question.
7. The Council refused to grant prior approval for the proposal under Schedule 2, Part 3, Class Q.1(i), which relates to the extent of building operations reasonably necessary for the building to function as a dwellinghouse. However, it found that the proposal complies with all other conditions and limitations in the GPDO and there is no substantive evidence before me that would lead me to a different conclusion.
8. The main issue is therefore whether the proposal would be permitted development as set out in the GPDO, with regard to the extent of the building operations reasonably necessary for the building to function as a dwellinghouse.

Reasons

9. Class Q.(b) of the GPDO permits building operations reasonably necessary to convert the building to a dwellinghouse. Class Q.1(i) further specifies that development is not permitted under Class Q.(b) 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 dwellinghouse.
10. The Planning Practice Guidance (the PPG) clarifies that 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 existing building has a rectangular form, with a corrugated metal roof, and corrugated metal sheet walls enclosing three of its four sides. The fourth side, to the east, is open except for metal support posts. The building currently has no floor, with compacted bare earth as the ground surface.
12. The proposal would involve infilling the east side with a wall and windows along its full length. Windows and doors would also be inserted into the three other sides of the building. Additionally, a new concrete ground floor slab would be installed internally, alongside a new internal timber framework to receive insulated linings, and insulation to the roof.

13. The application was accompanied by a Structural Survey (SS) which concludes that the building is in good structural condition and capable of conversion. Most of the proposed works would be internal, and my observations at my visit gave me no reason to disagree with the conclusions of the SS.
14. I have had regard to the Hibbitt¹ judgment, which both main parties have referenced in their evidence. Unlike the building in the Hibbitt case, which was largely open on three sides, the building in this appeal is largely enclosed on three sides. Moreover, the proposal in that case involved the construction of all four exterior walls, whereas in this case, the proposal specifies the retention of the three retained exterior walls. While some elements of repair to the walls and roof are identified in the SS, there is no evidence to indicate that wholesale replacement would be necessary. As such, the conversion does not rely on the load bearing capacity of the frame alone, nor would it reduce the building to a 'skeletal structure' as in the Hibbitt case.
15. The proposed enclosure of the east elevation would span the length of the building on one side. While this would represent a large extent of new wall, its scale within the overall context of the otherwise enclosed building would not be significant. In addition, this new wall would not be needed to structurally support the building. Consequently, enclosing the east side would not amount to a rebuilding, as set out in the Hibbitt case, and would be reasonably necessary for the building to function as a dwellinghouse.
16. Regarding the other works proposed, the installation of windows, doors, and services reasonably necessary for the building to function as a dwelling house are permitted by Class Q, and there is no substantive evidence before me to indicate that these elements as proposed would not meet this requirement. Paragraph 105 of the PPG² states 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, such as the insertion of floors or internal walls, which are not prohibited by Class Q. Given that the new concrete floor slab, insulation, and frames to support internal walls and fittings would be installed internally, these elements would therefore not be prohibited by Class Q.
17. I therefore find that the proposed works would be reasonably necessary to carry out the conversion of the building to a dwellinghouse and would not be so extensive as to constitute a rebuilding of the pre-existing structure. In respect of this issue, I therefore conclude that the proposal would accord with the provisions of Schedule 2, Part 3, paragraph Q.1(i) of the GPDO.

Other Matters

18. The appeal site is within 10km of the Exe Estuary Special Protection Area and the East Devon Pebblebed Heaths Special Protection Area and Special Area of Conservation (the European Sites). The evidence indicates that Natural England, alongside the Council and neighbouring authorities have determined that housing development in this area is likely to have an adverse impact on the European Sites in combination with other plans and projects. The proposed development would result in a net gain of one residential unit, and therefore likely significant effects cannot be ruled out.

¹ Hibbitt and another v SSCLG (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin)

² Planning Practice Guidance: Paragraph: 105 Reference ID: 13-105-20180615

19. The grant of planning permission under Article (3)1 of the GPDO is subject to the compliance with Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). Effectively, Article (3)1 provides a pre-commencement condition which must be met, where the development would affect a protected habitat, before the works can be undertaken as permitted development.
20. A separate application to the Council under Regulation 77 of the Habitats Regulations must be made in this case, to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether the scheme could be undertaken as permitted development under the GPDO. Based on the evidence before me, it does not appear this application has yet been made. However, as the Regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issue that I have examined.

Conditions

21. The Council has provided two conditions which it recommends should be attached to any permission.
22. Any prior approval and planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO is subject to the condition under Q.2 (3) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date, as well as the provisions of paragraph W of Schedule 2, Part 3. Accordingly, the Council's suggested time condition is not necessary.
23. As I have listed the submitted plans in my decision and Paragraph W(12) requires development to be carried out in accordance with the details approved, the Council's suggested plans condition is also unnecessary. I have therefore not imposed either suggested condition.

Conclusion

24. For the reasons given above the appeal should be allowed and prior approval should be granted.

K Jones

INSPECTOR